TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~831.~~ 131

THE STEAMBOAT ST. JOHN, HER ENGINE, ETC.—THE NEW JERSEY STEAMBOAT COMPANY, CLAIMANTS,

vs.

ABRAHAM E. HASBROUCK, APPELLANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED DECEMBER 5, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 331.

THE STEAMBOAT ST. JOHN, HER ENGINE, ETC.—THE NEW JERSEY STEAMBOAT COMPANY, CLAIMANTS,

vs.

ABRAHAM E. HASBROUCK, APPELLANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 At a term of the district court of the United States of America, for the southern district of New York, held at the United States court rooms, in the city of New York, on Monday the 29th day of June, in the year of our Lord one thousand eight hundred and sixty-eight:
Present, the Honorable Samuel Blatchford, district judge.

ABRAHAM E. HASBROUCK
vs.
THE STEAMBOAT "ST JOHN," HER TACKLE, &C. } 18,526.

1864, Dec. 29th. The libellant files his libel against the above-named steamboat, her tackle, &c., in the words and figures following, to wit:

To the Honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York.

The libel and complaint of Abraham E. Hasbrouck, of said district, owner of the barge or vessel called the "Ulster County," against the steamboat or vessel called the "St. John," her engines, tackle, apparel, and furniture; and against all persons lawfully intervening for their interest in said steamboat, in a cause of collision civil and maritime. And thereupon the libellant alleges and articulately propounds as follows:

First. That the said steamboat "St. John," her engine, tackle, apparel, and furniture, are now in this district.

Second. That the said barge "Ulster County" was, at the time hereinafter mentioned, tight, staunch, and well and sufficiently manned, tackled, and provided, and owned by the libellant, and under the command of James H. Place as master.

2

3 Third. That on Saturday, the 19th day of November last past, the said barge left the city of New York at about five o'clock in the afternoon, bound to New Pultz, a place on the Hudson River opposite Poughkeepsie, in tow of the steam-propeller "Pluto," being lashed to the said propeller on the larboard side, and the said propeller also having another barge lashed to the starboard side, with a canal-boat towing astern of the starboard barge. That at about three o'clock in the morning of the 20th the said propeller, with the barges and canal-boat in tow, had reached a point on the Hudson River below West Point, it being a light moonlight morning—the moon about half size and the weather clear and pleasant—the tide being about half flood, and but very little, if any, wind. That the course of the said propeller with her tow had been along the east side of the channel of the river, being the usual and customary course for steam-vessels with tows to take when bound up the river. That as the propeller opened West Point the steamboat "St. John" was discovered coming down the river, and was then about abreast Magazine Point and about the middle of the river, that being the usual and proper place for steamboats to be coming down the river. That the proper course for the said steamboat to have pursued was to have continued her course down the centre or middle of the river and gone to the westward of the said propeller & tow, she having nearly the whole of the channel uninterruptedly for that purpose, but that instead of doing so, soon after she was seen from the tow, she
4 blew two whistles indicating her intention to go to the eastward

of the said propeller & tow, which signal was immediately answered by the propeller, and, as libellant is informed and believes, the wheel of the propeller was forthwith changed and starboarded, in order to make the course of the tow correspond with the signals. That very soon after the wheel of the propeller had been put hard astarboard, the pilot of the propeller discovered that the said steamboat "St. John" was steering to the westward and that a collision was imminent, if not unavoidable, and the bells of the propeller were forthwith rung to slow and stop, and the same were answered, and the headway of the propeller slackened, if not quite stopped. That the said steamboat came on with apparently unchecked speed and struck the larboard bow of the said barge "Ulster County," stem and about head on, cutting about ten feet into the said barge; that by great exertion the said propeller succeeded in getting the said barge around to the old dock at West Point, where she forthwith sunk.

Fourth. That the force of the collision was so great that three heavy timbers were cut through and the whole of the larboard bow crushed in, the stem of the steamboat going ten feet into the deck, crushing in and breaking the timbers and plank for that distance before she brought up. That to make the necessary repairs to the said barge of

$2,000 00 the damages so occasioned will cost the sum of two thousand dollars and upwards. That it cost the libellant to raise her

$500 00 the sum of five hundred dollars. That the said barge was at the time engaged in valuable & active employment in carrying

5 freight & passengers between New Pultz and the city of New York, and that the time necessarily occupied in raising the said barge, and making the necessary repairs, would not be less than thirty days, and for which he claims damages at the rate of fifty dollars per day,

$1,500 00 making the sum of fifteen hundred dollars, making an aggregate of four thousand dollars and upwards. That the said barge, at the time of said collision, had a valuable anchor & chain of

$1,000 00 the value of at least one thousand dollars on board, and which, by the breaking and carrying away of the sansom-post to which the chain was attached, have become entirely lost to the libellant. That several lines were parted and several lost by means of the said collision, and that by reason of her being sunk the beds & bedding

1,500 00 and furniture of the said barge were wet, damaged, lost, and spoiled to the extent of at least fifteen hundred dollars. That the said barge had, at the time of the collision, an assorted cargo of merchandize on board, consigned to various persons and parties, of the value of several thousand dollars, and that by means of the said collision the said goods and merchandize were damaged and lost

1,000 00 to the extent of one thousand dollars and upwards, and for which the libellant, as bailee, claims to recover. That the force of the said collision was so great that the said barge was greatly strained and injured, and also in being sunk became stained & otherwise injured in such way that the value of the said barge has become greatly deterio-

500 00 rated, and has sustained damage to the amount of at least five hundred dollars. That the libellant also was obliged to send a vessel to endeavor to save the cargo and also to tow the

6 said barge after she was raised, & in which he expended the sum

295 00 of two hundred & five dollars, making in the whole the sum of

$7,705 00 seven thousand seven hundred and five dollars and upwards.

Fifth. That the said collision was caused solely by the negligence of those on board of and navigating the said steamboat; among other things in attempting to go to the eastward of the said propeller, when

her proper course was to go to the westward; in giving a signal that she was going to the eastward, and then keeping to the westward; in not slowing & stopping when a collision became imminent; in not having a proper look-out, & in not carrying the lights required by law.

Sixth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of this honorable court.

Wherefore the libellant prays that process in due form of law may issue against the said steamboat "St. John," her engine, tackle, apparel, and furniture, and that all persons having, or pretending to have, any interest in said steamboat, may be cited to appear and answer all and singular the matters so propounded, and that this honorable court would be pleased to pronounce for the damages aforesaid, and for such other & different relief in the premises as shall to law and justice appertain, & also to condemn the said steamboat and the party intervening for his interest therein in costs.

AB'M E. HASBROUCK.

Sworn to before me this 29th day of Dec., 1864.

JOHN A. OSBORN,
U. S. Comm'r.

7 BEEBE, DEAN & DONOHUE, *Proctors.*
BEEBE, *Advocate.*

(Endorsed:) 18,526. U. S. district court. Abraham E. Hasbrouck vs. The st'boat "St. John," her tackle, &c. Libel. Beebe, Dean & Donohue, proctors for lib'l't. Filed Dec. 29th, 1864.

8

9 *Stipulation for libellant's costs entered into pursuant to the rules and practice of this court.—Filed the 29th day of December*, 1864.

District court of the United States for the southern district of New York.

Whereas a libel was filed in this court on the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and sixty-four, by Abraham E. Hasbrouck, against the steamboat "St. John," her engine, tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamboat, &c., may be condemned and sold to pay the demands of said libellant, and the said libellant and Samuel Williams, jr., surety, parties hereto, hereby consenting, and agreeing that in case of default or contumacy on the part of the libellant or his surety execution may issue against their goods, chattels, and lands, for the sum of two hundred & fifty dollars:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is, bound in the sum of two hundred & fifty dollars, conditioned that the libellant aboved named shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against him by this court, or in case of appeal, by the appellate court.

AB'M E. HASBROUCK.
SAM'L WILLIAMS, JUN'R.

Taken and acknowledged this 29th day of December, 1864, before me,

JOHN A. OSBORN,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Samuel Williams, jun'r, party to the above stipulation, being duly sworn, doth depose and say, that he resides in the south. dist. of New York, and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

SAMUEL WILLIAMS, JUN'R.

Sworn to this 29th day of December, 1864, before me,

JOHN A. OSBORN,
U. S. Commissioner.

Recorded the 29th day of December, 1864.

GEO. F. BETTS *Clerk.*

10

11 SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York, greeting:

Whereas a libel hath been filed in the district court of the United States for the southern district of New York, on the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and sixty-four, by Abraham E. Hasbrouck, against the steamboat or vessel called the "St. John," her engine, tackle, &c.—collision, $7,705 00—for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said steamboat or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had that the said steamboat or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are, therefore, hereby commanded to attach the said steamboat or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the southern district of New York, on the 17th day of January, 1865, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Honorable Samuel Blatchford, judge of the said court, at the city of New York, in the southern district of New York, this twenty-ninth day of sixty-four in the year of our Lord one thousand eight hundred and , and of our independence the eighty-ninth.

[SEAL.] GEO. F. BETTS, *Clerk.*

[U. S. 50-c. int. rev. stamp, canceled, 50-c.]

BEEBE, DEAN & DONOHUE,
Proctor for Libellant.

12 (Indorsed:) Vol. 18, page 526. Southern district of New York, United States district court. Abraham E. Hasbrouck vs. The

steamboat "St. John," her engine, tackle, &c. Monition ret'ble Jan'y 17th, 1865. Beebe, Dean & Donohue, proctors for libellant.

I hereby depute P. Miller to execute the within process. Dated Dec. 29, 1864.

R. MURRAY,
U. S. Marshal.

E. 97.
Filed January 17th, 1865.

In obedience to the within monition, I attached the st'boat St. John, her tackle, &c., therein described, on the 29th day of December, and have not given due notice to all persons claiming the same, that this court will, on the 17th day of January inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

R. MURRAY,
U. S. Marshal.

Dated Jan'y 17, 1865.

13 U. S. district court.

ABRAHAM E. HASBROUCK
vs.
THE STEAMBOAT "ST. JOHN," HER TACKLE, &C.

We admit that Daniel Drew and John Englis, of the city of New York, are good and sufficient sureties for the claimants in this cause, and that on their executing stipulations for costs & bonds on double the amount of the claim mentioned in the libel and justifying the same, steamboat be discharged from the custody of the marshal.

Dated January 14th, 1865.

BEEBE, DEAN & DONOHUE.

(Endorsed:) 18,526. Abraham E. Hasbrouck vs. The Steamboat "St. John," her tackle, &c. Consent to bond, &c. Beebe, Dean & Donohue, proctors for libellants.

Filed January 16th, 1865.

14

15 At a stated term of the district court of the United States of America for the southern district of New York, held at the United State court rooms, in the city of New York, on Saturday the fourteenth day of January, in the year of our Lord one thousand eight hundred and sixty-five:

Present, the Honorable Samuel R. Betts, district judge.

THE STEAMBOAT "ST. JOHN," HER TACKLE, &c., The New Jersey Steamboat Company, claimants,
asm.
ABRAHAM E. HASBROUCK, LIBELLANT.

And now The New Jersey Steamboat Company, a corporation created

by & under the laws of the State of New Jersey, owners of the steamboat "St. John," intervening for the interest of the said company in the said steamboat, appear before the honorable court and make claim to the said steamboat, &c., as the same are attached by the marshal, under process of this court, at the instance of Abraham E. Hasbrouck, and the said The New Jersey Steamboat Company aver that they were in possession of the said steamboat at the time of the attachment thereof, and that the company above named are true and bona fide owners of the said steamboat, and that no other person is the owner thereof; wherefore, they pray to defend accordingly.

The New Jersey Steamboat Company,

By D. DREW,
President.

Sworn to and subscribed this 14th day of January A. D. 1865, before me,

GEO. F. BETTS,
U. S. Commissioner.

CHA'S JONES,
Proctor for Claimants.

16 (Indorsed:) Vol. 18, No. 526. United States district court for the southern district of New York. Steamboat "St. John," her tackle, &c., *asm.* Abraham E. Hasbrouck. Cha's Jones, proctor for claimants. Claim of owners. Filed the fourteenth day of Jan'y, 1865.

17 *Stipulation entered into pursuant to the rules and practice of this court.—Filed the day of* 187 .

District court of the United States for the southern district of New York.

Whereas a libel was filed in this court on the 29 day of December, in the year of our Lord one thousand eight hundred and sixty-four, by Abraham E. Hasbrouck against the st'boat "St. John," her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that said steamboat, her tackle, &c., may be condemned and sold to pay the demands of the libellant, and the parties hereto hereby consenting, and that in case of default or contumacy on the part of the claimants or their sureties, execution for the sum of two hundred & fifty dollars may issue against their goods, chattels, and lands;

And whereas, also, a claim has been filed in said cause by the New Jersey Steamboat Company:

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators undersigned shall be, and each of them is hereby, bound in the sum of two hundred & fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this court, or upon an appeal by the appellate court.

D. DREW,
P'r New Jersey S. B. Company.
D. DREW.
JOHN ENGLIS.

Taken and acknowledged this 14th day of January, 1865, before me.

GEO. F. BETTS,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Daniel Drew & John Englis, parties to the above stipulation, being duly sworn, doth depose and say, that he resides in the city of New York, & that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

D. DREW.
JOHN ENGLIS.

Sworn to this 14th day of Jan'y, 1865, before me.

_____,
U. S. Commissioner.

Recorded the 14 day of Jan'y, 1865.

GEO. F. BETTS,
Clerk.

18 Bond for Libel

19 District court of the United States of America for the southern district of New York.

Filed the 14th day of January, 1865.

Know all men by these presents, that we, The New Jersey Steamboat Company, Daniel Drew and John Englis, are held and firmly bound unto Robert Murray, marshal of the United States for the southern district of New York, in the sum of fifteen thousand five hundred dollars, to be paid to the said Robert Murray, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 14th day of January, in the year of our Lord one thousand eight hundred and sixty-five.

Whereas a libel has been filed in the district court of the United States for the southern district of New York, on the 29th day of December, in the year of our Lord one thousand eight hundred and sixty-four, by Abraham E. Hasbrouck, libellant, against the steamboat "St. John," &c., for the sum of seven thousand seven hundred & five dollars, on which process of attachment has issued, and the said steamboat, her tackle, &c., is in custody of the marshal under the said attachment, and The New Jersey St'boat Company has applied for a discharge of said steamboat, tackle, &c., from the custody of the marshal, and has filed a claim claiming the said steamboat, her tackle, as owner, and has filed a stipulation for the claimant's costs, pursuant to the rules and practice of the said court:

Now, therefore, the condition of this obligation is such, that if the above bounden, The New Jersey Steamboat Company, Daniel Drew and John Englis, shall abide by and perform the decree of this court, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

N. JERSEY S. B. CO.,
By D. DREW. [SEAL.]
D. DREW. [SEAL.]
JOHN ENGLIS. [SEAL.]

Sealed and delivered, and taken and acknowledged, this 14th day of January, 1865, before me.

GEO. F. BETTS,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Daniel Drew and John Englis, being duly sworn, each depose and say that he resides in the southern district of New York & that he is worth the sum of thirty-one thousand dollars, over and above all his just debts and liabilities.

D. DREW.
JOHN ENGLIS.

Sworn to this 14th day of January, A. D. 1865, before me.
GEO. F. BETTS,
U. S. Commissioner.

I approve of the sufficiency of the sureties to the within bond. Dated this 14th day of January, 1865.

SAM. R. BETTS.

Recorded the 14th day of January, 1865.

20

21 At a stated term of the district court of the United States of America for the southern district of New York, held at the U. S. court rooms, in the city of New York, on Tuesday the 17th day of January, in the year of our Lord one thousand eight hundred and sixty-five:

Present, the Honorable Sam'l R. Betts, district judge.

THE STEAMBOAT ST. JOHN }
asm.
ABRAHAM E. HASBROUCK. }

On filing claim and stipulation for claimant's costs, together with a bond under the act of Congress in double the amount claimed, approved by the district judge. On motion of Cha's Jones, proctor for the claimants, it is ordered, that the appearance of the claimant be and the same is hereby entered, and that a copy of this order be delivered to the marshal.

22 (Indorsed:) Vol. 18, No. 526. United States district court, for the southern district of New York. The steamboat "St. John," her tackle, &c., *asm.* Abraham E. Hasbrouck. Cha's Jones, proctor for cl'ts. Order to marshal. Filed the 17th day of January, 1865.

23 To the Honorable Samuel R. Betts, judge of the district court of the United States for the southern district of New York:

The answer of The New Jersey Steamboat Company, owners of the steamboat "St. John," intervening for their interest therein to the libel and complaint of Abraham S. Hasbrouck against the said steamboat, her engine, tackle, apparel, and furniture, answers and alleges as follows:

First. That the respondents have not any knowledge or information sufficient to form a belief whether the libellant was the owner of the barge "Ulster County," at the time for that purpose in the libel mentioned, or whether she was bound on the voyage therein mentioned.

Second. That the respondents deny all the other statements and allegations in the said libel except as hereinafter admitted or stated.

Third. The steamboat "St. John," belonging to a regular line of

steamboats running between the cities of New York and Albany for the conveyance of freight and passengers, left the city of Albany in the evening of the 19th day of November, 1864, and proceeding on her regular voyage down the river, and when about abreast Magazine Point, she opened West Point and saw the propeller "Pluto" with barges in tow, coming up the river below West Point. The "St. John" proceeded down in about the centre of the river, that being her usual and proper course in going down at that place, and seeing that the propeller
24 was pretty into the westward, blew two whistles as a signal for the propeller to keep to the left, but her signal was not answered by the propeller. The "St. John" was then stopped, & the propeller not answering the signal, and not keeping to the left, as it was her duty to have done, the "St. John" was backed and continued backing up to the time of the collision. At the time the St. John commenced backing the propeller was heading to the eastward, and then blew two whistles as a signal for the St. John to go to the right, but it was *to* late for the St. John to change her course and go to the westward of the propeller, and the propeller continued on her course without checking her speed, and the two vessels soon came in collision.

Fourth. That, as the respondents are informed and believe, the propeller had not, at the time of the collision, a competent crew on board, and at the time of the giving of the signal by the "St. John" and afterwards there was not a competent pilot in charge of the wheel of the propeller, and that the propeller was further to the west shore than usual for steamboats going up the river, and out of the proper course and track of steamboats going up, and the collision was caused for the causes herein stated and by reason of the neglect of the propeller to answer or obey the signals of the "St. John," and thereafter by not stopping and backing when the danger of a collision became apparent, and that everything was done by the "St. John" that could be done to avoid the collision.

25 Fifth. That the respondents deny that the libellants sustained the damages in the said libel stated or damages to the amount therein alleged.

Sixth. That all and singular the premises are true, wherefore the respondents pray that this honorable court will be pleased to pronounce against the libel aforesaid and to condemn the libellant in costs, and otherwise law and justice to administer in the premises.

D. DREW,
President.

Sworn to this 9th day of September, A. D. 1865, before me. Witness my hand and official seal.

[NOTARIAL SEAL.]

ARCH. W. SPEIR,
Notary Public, N. Y. City.

CHARLES JONES,
Proctor for Resp'd't.

(Endorsed:) 18,526. U. S. district court for the southern dist. of New York. Abraham E. Hasbrouck ag'st the steamboat "St. John," &c. Answer. Charles Jones, proct. for resp'd'ts. Filed Sept. 9th, 1865.

26

27 At a stated term of the district court of the United States of

America for the southern district of New York, held at the United States court rooms, in the city of New York, on Thursday the 16th day of January, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Samuel Blatchford, district judge:

ABRAHAM E. HASBROUCK
vs.
THE STEAMBOAT 'ST. JOHN," &C. } 18,526.

This cause being called in its order on the calendar, ordered hearing. Pleadings read.

Evidence for libellant:

McGregor Trumper.....Sworn.
James Fowler..... "
Sidney Brett..... "
Harvey Bullis..... "
Stephen Van Wart..... "
Philip R. Craft..... "

Cause adj'd to to-morrow.

FRIDAY, *January* 17, 1868.—Cause continued.

Ev. for libell't:

McGregor Trumper.....Recalled.

Ev. for claimants:

Hulet Lake.....Sworn.
William Bulson..... "
James Patterson..... "
Joseph Bowner..... "
Joel Wright..... "
Perry C. Smith..... "
Hulet Lake.....Recalled.

Mr. Donohue argues for libellant. Mr. Swan, of Poughkeepsie, argues for libellant. Mr. Charles Jones argues for claimants.

C. A. V.

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29 United States district court, before Hon. Judge Blatchford, Thursday, January 16th, 1868.

ABRAHAM E. HASBROUCK
vs.
THE ST'BOAT "ST. JOHN," &C.

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McGregor Trumper.
James Fowler.
Sidney Brett.
Harvey Bullis.
Stephen Van Wart.

Philip R. Craft.
Warburton, Bonynge & Devine, Stenographers & Law Reporters, 39 Park Row, N. Y.

30

31 Messrs. Beebe, Dean & Donohue, counsel for libell'ts. Charles Jones, esq., counsel for respondents.

Mr. Beebe reads the libel. Mr. Jones reads the answer.

McGREGOR TRUMPER, sworn on behalf of libellants and examined by Mr. Beebe:

Q. What is your business?
A. My business is boating.
Q. What vessel are you on now, or are you on?
A. The last two years I have been on the floating elevator around the harbor of the city of New York.
Q. Were you on the Pluto?
A. I was.
Q. As what?
A. As pilot.
Q. Do you recollect the night of the collision?
A. I do, sir, well.
Q. Where had you started from, and where to were you bound?
A. We left New York about six o'clock, our usual hour, as near as I can remember, bound for Roundout, with two barges and a canal-boat in tow.
Q. The barges towed how?
A. They were alongside, the Ulster County on the larboard side, and the canal-boat under the Harvest Home's stearn; I came on watch,
32 my last watch on, off Haverstraw, I think; we proceeded up the river as far as Garrisons, below West Point about a mile, (witness refers to map;) I got as far as near Garrisons and I called a man off deck and placed him at the wheel and I passed round the stern of the boat, in by the engine-room, and saw that she was working very slow.
Q. About what speed was she making at that time?
A. I should suppose she was going at the rate of between 4 and 5 miles an hour.
Q. (By the court.) The propeller?
A. Yes, sir; after passing the engine-room, I went forward expecting to meet the St. John, being that we were behind the time, the usual hour of meeting her; the usual place of meeting her was at Newburg about.
Q. Your usual speed would have carried you to Newburg?
A. It would. While I stood there I ordered the man at the wheel to starboard his wheel a little, to cant a little more to the westward. Our course, previous to my speaking to him, was about north; he done so; in a few moments after that I saw the "St. John" off Magazine Point. (The witness pointed out on the map the position of his vessel at that time, which was marked "A.")
Q. Where was the St. John?
A. The St. John was there, about off Magazine Point, (marked on the map "B;") she was close in to the eastward near Magazine Point.
Q. Then what did you do?

vious to going on the Pluto, and the propeller G. F. Van Beck, running between Rondout & Albany; I have been slooping for 7 years, more or less.

Q. What vessels running between Rondout and any other point above or below to New York had you been pilot of before this time?

A. The steamboat Storm and the propeller G. F. Van Beck.

Q. Those are the only two?

A. Yes, sir.

Q. In whose employ were you?

A. David Abbey & John Wolford.

Q. What was the power of the Pluto; was she a propeller?

A. She was a propeller.

Q. What was her tonnage and her power?

A. I could not answer for her power; she was 100 feet in length and had a 26 feet cylinder.

Q. What was the length of the barges lashed alongside of her?

A. The barges lashed alongside of her was about 125 feet long, I should judge.

Q. How much did they overlap her in measure?

A. About 25 feet.

Q. (By the court.) Aft?

A. Forward.

Q. (By Mr. Jones.) They were further forward?

A. Yes, sir.

38 Q. Their sterns were about even?

A. Yes, sir; their sterns were even, and they overlapped her 25 feet.

Q. How high were those barges out of the water?

A. Their main decks were about equal to ours.

Q. What was there above the main deck?

A. Above the main deck they were about eight feet higher than ours.

Q. They were double-tiered barges, as they were called?

A. Yes, sir.

Q. The tier ran out upon the bow of the barges?

A. Yes, sir.

Q. About eight feet higher than yours?

A. Yes, sir; calculated for carrying hay.

Q. Where was your wheel-house or pilot-house, in reference to her stem or stern?

A. Her wheel-house was about 40 feet from her stern, I should suppose.

Q. How much above the main deck of the Pluto was that wheel-house?

A. That wheel-house was about three feet, I should suppose.

Q. (By Mr. Beebe.) That was the floor of it?

A. Yes, sir.

Q. (By Mr. Jones.) Now, then, in coming up the river could you look over the sides of the barges to see what objects there were on either side, standing in that pilot-house?

A. No, sir; we could not.

Q. Then you could not, from the main deck, where you say you were, forward, look on either side over the barges?

39 A. No, sir.

Q. (By the court.) Do you mean if you were at the stem of the Pluto you could not?

A. Yes, sir.

Q. (By Mr. Jones.) Your only vision in standing upon the main deck of the Pluto was forward; you could only see vessels coming down, as you stood there, in the line of the Pluto?

A. Oh, no, sir; I could see on an angle.

Q. What angle?

A. Well, you could not term it square, but nearly half a square; an angle of 45 degrees.

Q. Tell me the course of the river at about the point which you say you were when you saw the St. John?

A. I saw the St. John on a course of W.NW.

Q. I want to know the course of the river where you were; how was the Pluto heading, and what was the course of the river?

A. The course of the river there is about north, bearing west.

Q. The course of the river at the point you mark "A" was about north?

A. Yes, sir.

Q. What is the course of the river above West Point, at that point where you saw the St. John?

A. It is about W.NW., I think.

Q. The other, you say, was north, and the other about W.NW.?

A. Yes, sir.

Q. Where were you standing when you heard the signals from the St. John?

40 A. I was within, I should say, about 4 feet from the pilot-house, in the act of going in the pilot-house.

Q. On where?

A. On the main deck of the Pluto.

Q. Who was in the pilot-house then?

A. This time our deck-hand was.

Q. Who was he?

A. A man by the name of Love, a deck-hand.

Q. When you heard that signal from the St. John you say you were about 4 feet from the pilot-house; what did you do then?

A. I passed, as I say, and went into the pilot-house and reached up to the whistle-cord, and answered her whistle; gave her two whistles in return.

Q. You went in and then answered in that way?

A. Yes, sir.

Q. You where not in the pilot-house at that time?

A. I was at the pilot-house.

Q. How long did that take you?

A. I should suppose that took me four or five seconds after I heard her whistle.

Q. You were at the office of the People's Line after this collision, were you not?

A. I think I was, sir.

Q. And you met there Mr. Lake, the pilot of the St. John?

A. I think I did.

Q. And Mr. Perry C. Smith, the agent of the line?

A. I think I did.

Q. How long after the collision was that?

A. I should think that was the second or third day.

41 Q. I desire to ask you whether a conversation didn't occur to this effect at that time: were you not asked why you didn't answer the signals of the St. John?

A. I don't recollect that, sir, any conversation of that kind.

Q. Don't you recollect that you said you did not do so because you were on the barge, and it took you some time to get down from the barge to the pilot-house, before you could do it?

A. No, sir; I never gave any such statement as that; I have no recollection of anything of that kind taking place. I am positive nothing of that kind took place.

Q. Will you now say whether you were not on or of the barges at the time of the signals of the St. John were made?

A. I was standing on the deck of the Pluto at the time the signals were exchanged, at the time I heard the signals.

Q. Who did you have as a look-out on your boat?

A. We had this deck-hand I speak of, who I had at the wheel at the time.

Q. Where?

A. I had him placed at the wheel.

Q. Had no other look-out?

A. We had only one look-out; that is all that was required according to law.

Q. None except the man at the wheel and yourself; was there none on the barges on the look-out?

A. Yes, sir, we had a man on the barge on the look-out.

42 Q. Who was he?

A. He was the mate, sir.

Q. The mate of what?

A. The mate of the barge "Ulster County;" I saw him a few minutes previous to that.

Q. How soon after the signals did you ring to slow your boat, as I understand that was your first movement?

A. I should suppose it took me four or five seconds to do this.

Q. What order did you give the engineer, by bell or otherwise, in reference to the action of the engine?

A. I rang one bell to slow her, and then one bell to stop her.

Q. You rung no bell to back till the collision occurred.

A. I did not, sir, because we never trust to backing.

Q. Propellers cannot back?

A. They can back, but it would take a long time.

Q. You rang to slow and stop?

A. Yes, sir.

Q. You were going at about what rate of speed?

A. We were going very slow, I should say in the neighborhood of four miles an hour, I should judge, on account of their cleaning fires, and being close shut off; I noticed them cleaning fires when I passed the engine-room.

Q. Why were you shut off there?

A. On account of their cleaning fires.

Q. There is plenty of room there?

A. Yes, sir, I stood right over the boiler, and had free access to this room, and know it.

43 Q. The barge was struck at about what point, on the starboard side, about where?

A. Struck about five feet from her stem here—her starboard bow.

Q. Could you determine, looking from the point that you stood at, the course and direction of the St. John at that point in that bend of the river when you first saw her?

A. I had partially made up my mind, when I went into the pilot-house, that she was going eastward.

Q. Could you tell the course and direction of the St. John from that point?

A. I could see her plainly across the point.

Q. From what part?

A. From where I stood.

Q. Did she change her course after you saw her?

A. Previous to my stopping, I think her course was to the westward; that she had changed her course.

Q. At what point of time did she change her course—how soon after the signals?

A. (Referring to map.) There is where the signal was given when I first saw her, (marked "C.")

Q. Now, make the point where you were when she gave the signal.

A. About there, (marked "D" on map.)

Q. (By the court.) "D" was when you blew?

A. Yes, sir.

Q. (By Mr. Jones.) From the time the signal was given by the St. John, and your answer to it, where were you standing after you gave your signal from that time on?

44 A. I stood at the wheel.

Q. All the time?

A. All the time.

Q. (By the court.) You remained at the wheel?

A. Until the collision took place.

Q. (By Mr. Jones.) And you were the only man that gave any order to the engineer touching the engine?

A. Yes, sir.

Q. At about what time after the signal was it that you think the St. John changed her course?

Mr. DONOHUE. To the west.

A. I should suppose in the course of six or eight seconds; probably 10.

Q. How far do you think you were apart during that time?

A. Well, I think the St. John was then within about three or four lengths at the time she changed her course to the west.

Q. (By Mr. Beebe.) Lengths of the St. John?

A. Yes, sir.

Q. (By Mr. Jones.) Suppose you had rung to back, what would have been the effect touching the collision; would it have been avoided?

A. No, sir.

Q. Why not, if you were only going four miles an hour?

A. As I said before, we never trust to these propellers backing on account of their wheel.

Q. Why don't you trust to their backing? you don't use a boat

45 that cannot manage its tow. Suppose you had backed promptly at that time, would the collision not have been avoided?

A. No, sir.

Q. Why not?

A. I think in my own mind it would have taken some three or four minutes before we could have got stern-way on to her.

Q. Then you had not stern-way at the time of the collision?

A. We had not stern-way.

Q. About what is the width of the Pluto?

A. Well, I think she is about twenty-four feet.

Q. And the barges?

A. I think the barges are about 32 or 33 feet over all.

Q. You gave no other signal except the one in answer to the St. John, which you say?
A. No, sir.
Q. And heard no other from her?
A. And heard no other from her.
Q. Were the parties that licensed you U. S. Government inspectors?
A. Yes, sir.

Re-direct:

Q. This man you speak of was at the wheel, and up to the time you called him to the wheel he had been on your forward deck?
A. Yes, sir.
Q. And you called him to the wheel and you went forward?
A. I went forward.

46 JAMES FOWLER sworn on behalf of libellant.

Ex'd by Mr. Donohue:

Q. What is your business?
A. Boating.
Q. Were you on board the Pluto?
A. Yes, sir.
Q. In what capacity?
A. Assisting engineer.
Q. Do you recollect the collision?
A. I do, sir.
Q. About how fast had your boat been going prior to your getting any order or direction in regard to the engine?
A. She had been going about four miles an hour.
Q. What was the reason you were going so slow?
A. I had a close shut-off—I was cleaning fires.
Q. Did you get any order prior to the collision?
A. No, sir.
Q. I mean as to stopping or backing?
A. No, sir.
Q. Any bells?
A. I got two bells.
Q. What was the first or bell you got?
A. To slow her down.
Q. What is that signal—one bell?
A. One bell is to slow her down.
Q. Then what next?
A. Another bell to stop her.
Q. Did you obey these?
A. Yes, sir.
Q. How did you obey them—quick or slow?
47 A. I obeyed them quick.
Q. Did you feel the collision?
A. I did, sir.
Q. Was that before or after the collision you got those orders?
A. Before the collision I got those orders.
Q. Did you come out of the engine-room at all?
A. No, sir.
Q. Did you know as to what part of the river you were in?
A. No, sir; I could not answer that.

Cross-examined by Mr. Jones:

Q. How soon before these bells were rung did you feel the collision? how soon were they rung before you heard the collision?

A. I should judge about a minute.

Q. The collision came pretty quick after the bells?

A. Yes, sir; very quick.

Q. You can back that propeller, can you?

A. Yes, sir; we can back her, but it would be some little while before you would get any headway on her.

Q. How long?

A. Two or three minutes.

Q. How long would it take you to reverse the screw?

A. About two seconds.

Q. She could be backed then?

A. Well, yes, sir; she could be backed, but she wants a little time.

Q. How long have you been engineer or assistant engineer?

A. Four years.

48 Q. You had only been assistant engineer for about a year at the time of the collision?

A. Yes, sir?

Q. You had no license?

A. Yes, sir; I have a license.

Q. Had you at that time?

A. No, sir.

Q. Who was the engineer?

A. William Trumper.

Q. Where was he?

A. He was in bed.

Q. You were the only man at the engine?

A. I was the only man at the engine.

Q. (By Mr. Donohue.) You say it would take from a minute and a half to two minutes to get stern-way on her?

A. Yes, sir; I should judge that.

SIDNEY BRETT sworn on behalf of libellant.

Examined by Mr. Donohue:

Q. What is your business?

A. I was at that time employed as a clerk.

Q. On what?

A. On the barge "Ulster County."

Q. Did you see the collision?

A. I did not.

Q. Did you feel it?

A. Yes, sir.

Q. What did you do?

A. I didn't do anything, but the collision put me out of bed.

49 Q. When you got out of bed, what did you do?

A. I looked out of the door.

Q. Tell us at that time what position in the river your vessel was, whether to the east or the west of the middle?

A. It was to the eastward of the middle of the channel.

Q. About what proportion, do you think?

A. We will say the channel at that place was one mile in width; we were three-quarters of a mile from the west shore, and quarter of a mile from the east shore.

Q. You don't put that as an actual fact?
A. No, sir; merely as an example.
Q. What kind of a night was it?
A. I could not say whether it was moonlight or starlight, or what it was, but still light enough to see rightly the position which we were in.
Q. Did you notice how far that blow cut into your vessel?
A. Yes, sir.
Q. About how far?
A. About eight feet.
Q. How many timbers were carried away?
A. I could not tell how many it carried away, but quite a number. I should judge it cut in about eight feet, and a foot and a half below the water line. That was my judgment; I didn't, of course, measure it.

Cross-examined by Mr. Jones:

Q. You are not a sailor?
50 A. No, sir.
Q. Where were you at the time you felt the collision?
A. I was in bed just before that, and I got out very soon after.
Q. You were on the barge that was struck?
A. Yes, sir.
Q. How high were you above the surface of the water where you were sleeping?
A. The deck from the surface of the water was about four feet, and I was about three feet from the main deck, which makes about seven.
Q. What was there above that?
A. There was still another deck, still two decks—the upper deck and the hurricane deck.
Q. About how high are those two decks above the main deck?
A. The upper deck above the main deck is about 10 or 11 feet. The hurricane deck above the upper deck is about the same distance, 10 or 11 feet. That is as near as my judgment can tell me. Of course, I didn't measure it.
Q. Was this barge that was struck, disconnected from the Pluto afterwards and run ashore?
A. Yes, sir; immediately.
Q. Ran ashore where?
A. Not ran ashore; she was disconnected from the Pluto by the blow.
Q. Were you not told to run her on the flats?
A. No, sir; I was not told to do so, because I had nothing to do with it. I was clerk of the boat.

Re-direct:

51 Q. You say the blow broke all the lines and knocked your stern wheel over?
A. Yes, sir; we had four or five hawsers out, all of which were parted.
Q. What was the size of them?
A. I could not say.
Q. You have seen them?
A. Yes, sir; the main hawser, the one we towed by, I should think was as large as that.
Q. About six inches?
A. It was about as large as that, and we had a breast line forward and aft, and others, making in all five.
Q. And all parted?

A. Yes, sir; every one.
Q. How far back were you?
A. I could not say exactly as to that, but I think we were sent back some three or 400 yards.
Q. Do you know what the Sumsins post is?
A. Yes, sir.
Q. Was that parted?
A. The bow of the St. John came into the Samson's post so as to dislodge it, so that it was of no further use.
Q. Where did you sleep?
A. I slept in the office, in the after-part of the boat.
Q. The concussion, then, came the whole length of the boat?
A. Yes, sir; it took me out of my berth.
Q. Were you asleep?
52 A. Yes, sir; to the best of my knowledge & belief, I was.
Q. Did it burst the door open?
A. Yes, sir; the concussion opened the door, and I stood on my feet right in front of the door, and some one said the boat was sinking, or a cry of that kind, and I immediately looked out to see how many miles I had to swim, but I hadn't to swim any.
Q. Are these decks all open?
A. They are all open.
Q. You can see right through them?
A. Yes, sir; nothing but stanchions at intervals of perhaps 10 or 15 feet or less, just as it happens, stanchions about the size of your leg, if you have not got a very big one.

HARVEY BULLES sworn on behalf of libellant.

Ex'd by Mr. Donohue:
Q. What is your business?
A. Boating.
Q. Do you recollect this collision?
A. Yes, sir.
Q. At the time of the collision on what vessel were you engaged?
A. On the Ulster County.
Q. The barge that was injured?
A. Yes, sir.
Q. Where were you at the time of the collision?
A. I was standing about at the main gangway when she struck, but before the collision I was out on the forward deck.
Q. Did you see the lights of the St. John?
53 A. Yes, sir.
Q. Where were you when you first saw them?
A. I was on the forward deck of the Ulster County.
Q. Did you see the lights of the St. John before or after she whistled?
A. I saw them about I should judge from five to six seconds after she blew her whistle.
Q. After it?
A. Yes, sir; just as she was opening around West Point I saw the lights.
Q. That is, as she opened to you around West Point?
A. Yes, sir.
Q. You had not seen her lights up to that time?
A. No, sir; I had not.

Q. At that time how would she have gone with reference to your barge if she had kept on that course?

(Obj. to.)

A. The course she went on after she blew her whistles?

Q. Yes, sir.

A. She would have gone to the eastward of us.

Q. She blew the whistles?

A, Yes, sir.

Q. What was done on the tug as to the whistle?

A. The Pluto answered the whistles—blew two whistles.

Q. Then what did the St. John do?

A. The Pluto, after she answered her whistles, sheered to the westward; our course was about W. NW. after sh eanswered the St. John's whistle after they changed.

Q. About how many points do you think she changed?

54 A. I could not exactly tell that.

Q. What did the St. John do?

A. The St. John came on down, and I thought she was going to the eastward of us, and all at once I seen her take a sheer towards the westward.

Q. What part of your vessel did the St. John strike?

A. She struck the port bow right alongside the stem.

Q. How was your vessel as to the channel to the eastward or the westward of the centre?

A. I could not exactly tell that; I would not want to say about how we were; I should judge we were in the middle of the river or two-thirds of the way across.

Q. Two-thirds of the way across, which way?

A. To the westward.

Q. That is, from the west?

A. Yes, sir; towards the westward we were; we were about the middle of the river or two-thirds to the westward when the St. John struck us.

Q. From the eastward?

A. Yes, sir; from the eastward towards the westward.

Q. Two-thirds from the eastward.

A. Yes, sir.

Q. What kind of a morning was it?

A. It was light.

Q. How far did the blow come into you?

A. I should judge about 10 feet, 8 to 10 feet.

Q. What was the effect on your lines?

A. Parted every thing that was out, sir.

Q. What lines had you out?

55 A. We had a spring line that we towed by a hawser, a breast line, a backing line, and one breast line aft.

Q. And all parted?

A. All parted, yes, sir.

Q. Did you see any diminution in the speed of the St. John till she hit you?

A. I could not say whether she was backing or going ahead; I mean, that is, whether her wheels were going ahead or back. I could not say that.

Q. Could you tell as to the speed she came at; could you form any judgment.

A. No, sir. I know she came into us pretty severe.

Q. Before the whistles blew how fast were you going?
A. The boat that I had in tow?
Q. Yes, sir.
A. We were very near stopped. I should judge—the way we were going in the water—we were about moving; that is about all. I know it was flood tide at the time, and we were not more than drifting nicely with the tide, because the propeller had stopped. I didn't hear her wheel until they had blowed the whistles.

Cross-exam'd by Mr. Jones:

Q. Didn't hear what wheel?
A. The propeller's wheel.
Q. What was your business in this barge?
A. I was first hand, or mate, or whatever you have a mind to call it.
Q. What were your duties?
56 A. My duties were to see to stowing the *the* boat, and loading her and unloading her.
Q. Was anybody at her helm?
A. No, sir, we never have any one at her helm.
Q. There was no one at her helm?
A. No, sir.
Q. What has been your business heretofore?
A. Always boating.
Q. What kind of boating?
A. Sloop-boating and steamboating.
Q. When did the Pluto change her course?
A. Right after she blowed her two whistles.
Q. How did she change it?
A. Changed it to W. NW. from the eastward.
Q. How was she heading before?
A. She was going up eastward a little to the eastward of the middle of the river.
Q. How could you have observed she changed her course?
A. I have been long enough on the river to know whether a boat sheers one way or another.
Q. What were you looking at at the time; what called your attention to it?
A. I was looking at the St. John, the way she was coming; I see we were sheering to the westward at the time.
Q. The only thing, then, that makes you think you changed your course was the course of the St. John?
A. No, sir.
Q. What did you look at?
A. I looked at West Point, and I seen we were making a little
57 inside of West Point, below it; we were between that and the little fort on the point—White Point.
Q. That you were making before you think there was any change of course?
A. We were making for West Point after she blowed her whistle; we were over there, going up along the boat-house, when the St. John blew her two whistles, the Pluto answered them, and shaped her course right across there in this direction.
Q. You were looking at West Point?
A. I could tell from the position we were in, and the way she was heading towards the west land, that she was steering to the westward.
Q. How long was that sheer before the collision?

A. I could not exactly tell you how long it was.
Q. How far was the St. John off?
A. When she took that sheer.
Q. When you say the Pluto took the sheer?
A. I suppose may be she was 1,000 yards or more off from us. I could not exactly tell the distance.
Q. Did she change her course?
A. Yes, sir.
Q. The St. John did?
A. I have not said the St. John changed her course; I said that the Pluto changed her course from the eastward to the westward after the two whistles were blown.

Q. I now ask you if the St. John changed her course?

58 A. After we changed our course to the west, the St. John was going down to the east of us, and all at once I seen her take a sheer to the westward toward the propeller.

Q. How soon was that after the signal and before the collision that she took her sheer?
A. Quite a little time. I could not exactly say how long it was—may be five or ten seconds or more, for what I know; I could not exactly say.

Re-direct:

Q. At the time that you first made the St. John in reference to the sheer of the river, where was the tow?
A. She was going along up the east towards Garrison's Landing, on the east side, and changed to the westward. After the whistles were blown, the Pluto changed her course to the westward.
Q. At the time the signals came from the St. John, two signals, was there room enough in the river for the St. John to have passed to the westward of you—to the right?
A. Yes, sir; to the westward there was room enough.
Q. How much of the river had she in reference to your tow, previous to the blowing of the signal?
A. She had about two-thirds of the river to herself to go to the westward.
Q. How long should you think intervened between the St. John blowing her whistle, two whistles, and the same being answered by the Pluto?
A. Well, it was not but a very few seconds; perhaps not over two or three.

59 Q. Promptly answered?
A. Yes, sir.

Q. At the time the Pluto answered the signal of the St. John with her two whistles, how far should you think the two vessels were apart?
A. I should judge they were from a quarter to a half a mile apart.
Q. If the St. John had kept her course to the eastward, or had she obeyed her signal, would there have been any collision?
A. No, sir.
Q. If she had done either, there would have been no collision?
A. No, sir; I don't think there would.
Q. (By Mr. Jones.) Suppose the Pluto had backed, would there have been any collision?
A. I could not tell that. I have been on propellers, and I know they work very bad when they go to back; they generally slew themselves one way or the other.

Q. (By Mr. Beebe.) They don't back as well as a side-wheel?
A. No, sir.
Q. (By Mr. Jones.) You are quite sure the barge was struck on the port bow?
A. Yes, sir, she was struck on the port bow, right close by the stem.
Q. How far from the stem?
A. I could not tell exactly. The wood was all smashed. It might have been a foot from the stem for what I know, or two feet. The whole side was stove in there where she came.
60 Q. (By Mr. Beebe.) To reach that point, did the bow of the St. John have to cross the barge & the Pluto?
A. Yes, sir.
Q. The starboard barge & the Pluto?
A. Yes, sir.
Q. From the eastward to the westward?
A. Yes, sir.
Q. (Referring to the map.) Was the angle any more to the westward than that?
A. No, sir.
Q. (By Mr. Jones.) I will ask you whether the Pluto answered the signal from the St. John?
A. Yes, sir.
Q. What was the answer from the Pluto?
A. Two whistles.

STEPHEN VAN WART sworn on behalf of libellant.

Ex'd by Mr. Donohue:

Q. At the time of this collision what position did you hold?
A. Captain of the boat.
Q. Of which boat?
A. Of the Pluto.
Q. How long had you followed the water?
A. About 35 or 38 years.
Q. Much of the time on the river?
A. Yes, sir; all the time on the river.
Q. So you were perfectly familiar with the river?
A. Yes, sir.
61 Q. Previous to the collision where were you?
A. I was to bed, asleep.
Q. Were you out at any time before the collision?
A. No, sir.
Q. What started you—what made you get up?
A. When she struck the barge I got up.
Q. How long were you before you were up?
A. Not long; not more than a second or so; I had my pantaloons on.
Q. Where was the barge when you went on deck?
A. She was clear from us.
Q. Knocked clear from you?
A. Yes, sir.
Q. Where was the St. John?
A. Into the barge.
Q. Following her up?
A. Yes, sir.
Q. Which side of you was the St. John?
A. She was on the port side.

Q. On your port side of your steamboat?
A. Yes, sir.
Q. How far had she reached abaft of the stem of your barge at the time you got on deck?
A. The St. John was not clear of us; that is, her stem was not clear.
Q. Had her stem gone into your stem?
A. Yes, sir.
Q. Still carrying the barge down?
A. Yes, sir; carried the barge right away with her.
62 Q. How far did the barge get before the St. John and she separated?
A. They didn't separate till we backed down alongside of the barge again.
Q. Still hung together?
A. Yes, sir.
Q. How far down did they go before they brought up?
A. Probably she might have the length of the steamboat.
Q. She is over 300 feet?
A. I should think she was over 300 feet.
Q. And they were lying in contact when you backed down to them?
A, Yes, sir.
Q. What sized hawser was she fastened to the Pluto by?
A. I should think it was in the neighborhood of a six-inch hawser.
Q. Was it the centre or the bight of the hawser?
A. The centre part.
Q. & the other lines?
A. The other lines; yes, sir.
Q. Did you observe the way your vessel was heading at the time you came up, with reference to the sheer?
A. Yes, sir; I thought our boat had run on the rocks; of course, I looked to see where we were the first thing, and I should judge we were about the middle of the river, or nearer if anything to the eastward.
63 Q. How long had you been below, lying in your berth?
A. About three hours; I should think two and a half to three hours—somewhere along there.
Q. What kind of a morning was it after you got up?
A. It was light.
Q. Easily see the two shores?
A. Yes, sir; perfectly plain.
Q. Where was the barge struck?
A. On her port bow.
Q. Near the stem?
A. Near the stem.
Q. How did the blow appear to be, oblique or a direct blow?
A. It was a direct blow, I should think; I didn't pay much attention; I didn't go on board of the barge.
Q. But it was near the stem on the port side?
A. Yes, sir.
Q. What do they call those pieces of timber that run around on the outside of those barges?
A. Wear-pieces.
Q. Had she a wearing-piece?
A. Yes, sir.
Q. Was that broken too?
A. Yes, sir.

Q. How heavy a piece of timber was that?

A. I should think it was about 4 by 6, somewhere near that.

64 Cross-ex'd by Mr. Jones:

Q. How is your eyesight?

A. Well, I believe it is as good as the common run of people.

Q. Have you not been troubled a little with your eyes?

A. No, sir.

Q. The first you saw there was when the St. John and the tow were in contact there, after the collision?

A. Yes, sir.

Q. Who composed your crew?

A. Me and the pilot, deck-hand, cook, and two engineers.

Q. You had no assistant pilot?

A. No, sir.

Q. What was the name of the deck-hand at that time?

A. His name was James Love, I think; I wont be certain; I was not much acquainted with him.

Q. Where is he?

A. I think he is off at sea; I won't be certain where he is; I have not seen him in some time.

Q. You have not tried to find him?

A. I have not tried to find him; I have no need of him as I know of.

Redirect:

Q. Is the captain of the barge dead—Capt. Place?

A. Yes, sir.

Q. Where is the Pluto?

A. She is here in New York somewhere.

Q. Is she towing now?

A. Yes, sir.

65 Q. (By Mr. Jones.) When did the captain of the barge die?

A. That I don't know, sir; I have heard it since I have been to New York; that was the first I knew of it when I was subpœnaed here on this trial.

PHILIP R. CRAFT, sworn on behalf of libellant.

Ex'd by Mr. Donohue:

Q. Where do you reside?

A. I reside in the town of Lloyd, Webster County.

Q. Were you bound up the North River the night of this collision?

A. Yes, sir.

Q. As a passenger?

A. As a passenger.

Q. On board of what craft?

A. I was on board of the Webster County.

Q. Can you tell me at about what time of the morning this collision place?

A. It was between 2 & 3 o'clock.

Q. What kind of a morning was it?

A. A very fine morning indeed, & light.

Q. Very bright?

A. A bright moonlight night.

Q. Were you on deck or up?

A. I was on deck.

Q. How long had you been on deck before the collision?

Q. On your port side of your steamboat?
A. Yes, sir.
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A. It was between 2 & 3 o'clock.
Q. What kind of a morning was it?
A. A very fine morning indeed, & light.
Q. Very bright?
A. A bright moonlight night.
Q. Were you on deck or up?
A. I was on deck.
Q. How long had you been on deck before the collision?

A. Well, but a very few seconds.
Q. But before the collision you were on deck?
A. Yes, sir; before the collision I stood by the Capt.'s office,
66 when the boats struck.
Q. Did you hear the signal—the whistle?
A. I did not.
Q. What was the position of your tow in reference to the E. shore of the river?
I should judge, by all appearances, that we were about in the middle, or a little to the eastward.
Q. A little to the eastward of the middle of the river at the time you were struck?
A. At the time we were struck.
Q. You were on board the Webster County?
A. Yes, sir.
Q. Did the blow have any effect on you?
A. It staggered me a little, and I fetched up against something, I don't know what.

Cross-ex'd by Mr. Jones:

Q. Where was the Webster County struck—what part?
A. I cannot use the phrases you do.
Q. Right or left?
A. She was struck on the left side of the vessel; the boat was struck on the left side near her bow.
Q. Were you in motion, going forward at that time?
A. Yes, sir.

Adjourned to Friday, January 17th, 1868, at 11 o'clock.

(Endorsed:) U. S. district court. Abraham E. Hasbrouck vs. The St'boat St. John, &c. Stenographer's minutes of test'y on hearing, 1st day January 16th, 1868.

67 United States district court—before Hon. Judge Blatchford—Friday January 17th, 1868.

ABRAHAM E. HASBROUCK }
vs.
THE STEAMBOAT "ST JOHN" }

Index.

McGregor Trumper, recalled.
Hulet Lake.
William Bulson.
James Patterson.
Joseph Bowner.
Joel Wright.
Perry C. Smith.
Hulet Lake.

Warburton, Bonynge & Devine, stenographers & law reporters, 39 Park Row, N. Y.

68

69 McGREGOR TRUMPER recalled.

Examined by Mr. Beebe:

Q. You stated last night to me that you desired to correct one piece of your testimony; will you state what correction you desire to make?

(Objected to.)

A. In regard to the statement I made of the St. John striking the barge on the starboard side; I meant at the time the larboard side, the port side.

Cross-examined by Mr. Jones:

Q. Will you state how you made that mistake?

A. When I came to think the matter over, in place of striking her on the starboard side it was the port side.

Q. When did you think it over?

A. I thought it over a few minutes after my saying it.

Q. Who called your attention to it?

A. No one in particular, sir.

Q. Why do you change your testimony on that point; what is there that induced you to change your testimony from yesterday on that point, where you were examined twice in regard to it, both on the direct and cross?

A. As I said before, it slipped my mind at the time.

Q. What was there to recall your attention to this fact of the change in the blow, either on the larboard or starboard of that vessel?

70 A. I cannot really state what called my attention at the time, but afterwards I came to reflect that I had made a mistake in that way, of striking the wrong side.

Q. You were told after you left the stand, I suppose, that you had made a mistake, were you not, by the counsel?

A. By the counsel? no, sir.

Q. By who were you?

A. By no one in particular, that I know of; I thought of it—it came to my memory—previous to any one speaking to me about it.

(Libellant rests.)

HULET LAKE sworn on behalf of respondents.

Examined by Mr. Jones:

Q. What is your present business?

A. Keeping a hotel, sir.

Q. At the time of the collision between the barge in tow of the Pluto & the St. John, what was your position?

A. I was pilot of the St. John.

Q. Were you a licensed pilot?

A. Yes, sir.

Q. How long have you followed the river as pilot and otherwise?

A. 25 or 30 years.

Q. Before that?

A. Yes, sir.

Q. In what capacity were you acting?

A. Well, pilot most of the time; I have been pilot of a steamboat.

71 Q. On what kind of vessels?

A. Well, I have been pilot in the People's Line something like six or eight years, I guess.

Q. Before that?

A. Yes, sir.

Q. And on other steamers previous?
A. Yes, sir.
Q. The St. John that night was coming down from Albany, was she?
A. Yes, sir.
Q. Running between Albany and New York?
A. Yes, sir.
Q. What time did you come on deck?
A. About one o'clock in the morning.
Q. You left about 8 o'clock from Albany?
A. About 8 o'clock.
Q. You got on deck & took charge of the wheel?
A. Yes, sir.
Q. Who were with you at the wheel at that time, when you came on at 1 o'clock in the morning?
A. One was Mr. William Bulson, and Joseph Bowner, and James Patterson.
Q. There were three at the wheel with you when you came on?
A. Yes, sir.
Q. Now, we will come down to the point before you opened West Point, and what occurred afterwards?
A. I came down from Magazine Point, and when I got down to Magazine Point I saw there was a boat coming up below West Point,
72 and from the looks of her from where we were I thought she was best to the west shore, and I said to the wheelsman, "I guess we will go to the eastward of that fellow;" then I blowed two whistles for to go to the eastward of him, and they didn't answer it. I told Mr. Bulson to slow her; he rang the bell to slow her. After we went down a little way further, I blowed two more whistles and stopped the boat, and he didn't answer it then; then when I got so close to him that I could holloa to him, I holloaed to him and asked him why he didn't stop his boat, and I heard him ring one bell, but his boat was not stopped when she hit us. Then we had been backing some time; I think our boat had stern-way on it.
Q. What bells did you ring on the St. John?
A. I rang four bells.
Q. In reference to slowing, stopping, & backing?
A. Four bells.
Q. Repeat them in their order.
A. First, I rang to slow; then I rang to stop; then I rang two bells to go back, and the engine worked back.
Q. And the bells to back were rung before you came in collision?
A. Oh, yes, sir.
Q. I would like you to state, as near as you can, where you were touching Magazine Point, or any other point, when you saw the propeller.
73 A. I had just turned Magazine Point. (The witness located on the map his position when he saw the propeller by "X, No. 1.")
Q. Where would you locate on that map the position of the Pluto with her tow?
A. She was best on the west shore, (marked "X, No. 2.")
Q. You say you saw her head light over the point?
A. I could see her stern light, but not her head light.
Q. Did you see her stern light?
A. Yes, sir.
Q. What is the course of the river above the point, and what below?

A. The course of the river above West Point, up to Magazine Point, coming down, we steer about east and by south.

Q. I want to get the course of the river from Magazine Point down to West Point.

A. Some compasses will vary a point or two, but I think our compass was about east and by south. All compasses are not alike, and don't work exactly alike into a wheel-house. I think our compass was about E. & by S.

Q. Your course would be about E. & by S.?

A. Yes, sir.

Q. How below West Point; what is the course of the river there?

A. The course below West Point is S.SW. & N.NE.

Q. Then what is your usual course coming down the river, before you turn West Point—from Magazine Point down?

74 A. Well, about E. & by S. is the regular course down.

Q. How near, in running the St. John, or any boat of her size, in coming down, would you lie to the east shore at about Magazine Point to turn West Point?

A. Well, probably from 4 to 600 feet from the shore; the river is narrow there.

Q. You are nearest which shore there?

A. We would be nearer Magazine Point.

Q. Nearer the east shore?

A. Yes, sir; sometimes we would not be probably more than the length of the steamboat from the shore, and may be sometimes we would not be that.

Q. I want your regular course ordinarily in coming down from that point to turn West Point.

A. We would be probably 400 feet from the east shore.

Q. When did you first make a signal to this vessel; at about what point were you in reference to the river?

A. I was just leaving Magazine Point when I first seen this fellow coming up, and I thought that he was a little the best on the west shore, and that I would go to the east of him, and I signalled him to go to the east of him.

Q. What was your whistle?

A. Two whistles.

Q. Which meant what?

A. Which meant to go to the left hand.

Q. (By the court.) Which meant you were going to the left hand?

75 A. Yes, sir.

Q. Then you continued on your course?

A. Yes, sir.

Q. You say you gave another signal; at about what point was that?

A. When we were getting nearer West Point, it must have been about down to West Point or near that.

Q. What was the other signal you gave them?

A. I gave him two more signals to go to the left, and he didn't answer it.

Q. Was either of the two signals answered?

A. No, sir; it was not. There was no signal answered till I halloaed to him. Then he blowed one whistle, and he was heading then to the eastward of us. I halloaed to him and asked him why he did'nt stop his boat and he rang one bell and blew one whistle.

Q. The first signal you heard from him was one whistle?

A. Yes, sir; that is all the signal he blowed.

Q. The only one you heard?
A. Yes, sir.
Q. (By the court.) What bell was the first?
A. We rang them as close together as we could. He was heading to the eastward of us then.
Q. (By Mr. Jones.) When the one whistle came from him he was then heading to the eastward of us.
A. Yes, sir; he was heading to the eastward of us.
76 Q. Now, I want to get as near as I can, the action intermediate; after you had rang the two whistles and had no answer, what did you do first?
A. I stopped; the first time?
Q. Yes, sir.
A. I didn't do any thing; I kept my course on and expected to hear an answer from him one way or the other.
Q. Not hearing any answer, what was the next thing you did?
A. The second time I blowed the whistle and not hearing any answer——
Q. I want to know what you did on your boat after blowing the first signal of two whistles, before you blew the second signal of two whistles.
A. I slowed her down.
Q. You rang to slow?
A. I rang one bell to slow her.
Q. Then when did you ring your bell to stop?
A. I rang the bell to stop about the time I blowed the other two whistles.
Q. And you heard no answer?
A. I heard no answer.
Q. When did you ring your bells to back?
A. Well, I rang the bells to back after she had been stopped, probably half a minute or so.
Q. After the second signal of the two whistles and hearing no answer?
A. Yes, sir.
77 Q. In your judgment, how far were you apart at the time that you rang the bell to stop after blowing the second signal of two whistles?
A. I don't know when I rang to stop, I should think we were 600 feet apart. We were far enough apart to make up our minds then, if they would do it, to go on either side we had a mind to at that time. That is, if he had made up his mind to go either side, why he had plenty of time.
Q. After you had slowed and stopped, and rang to back, how was your boat in reference to motion; was it going forward or backward?
A. I think our steamboat had stern-way on her. I know she lost control of her rudder—the way her wheels flew around I thought she had stern-way on her—we had been backing long enough to have stern-way on her. I know the heft of the blow carried our head up the river.
Q. What change of course, if any, did you make on the St. John at any time after you sighted this vessel?
A. I didn't change my course at all only to go to the east. I had made up my mind to go to the east and I continued on. I didn't change my course at all. The course was not changed. I hove the wheel to

starboard to go to the eastward of him, and made up my mind to go to the eastward of him when I first saw him.

Q. Why didn't you change your course when you heard that one signal from them?

78 A. Then our way was all done; we had been backing; our boat had no control of her rudder; we were dead in the water then; we could not change anywhere; we could not go either way.

Q. Now in reference to the course of the Pluto; was that changed, and if so, at what time?

A. No, I don't think she changed her course at all; I could not see that she changed her course any.

Q. What was your position in the river in reference to the shore, at the time of the collision?

A. At the time of the collision I should think we were about in the middle of the river. It didn't vary a great deal either way. I should think we were nearly in the middle of the river.

Q. (Referring to map.) Look at that diagram and state at about what point of the river the collision occurred, in reference to the shore.

(The witness marked on the map the point at which the collision occurred.—X, No. 3.)

Q. What did you observe in reference to the motion of the propeller and her tow, at about the time of the collision; what bells did you hear from her?

A. I heard one bell rung to slow the boat, and when she struck, as she was going slow, her wheel was turning. They had not rung the second bell to stop her at all. The boat was not stopped.

Q. What was the effect of the collision upon the St. John?

79 A. We didn't feel much of it on board of us.

Q. Was the tow carried down the river?

A. No, sir; she carried us up the river—up above Magazine Point, or about abreast of Magazine Point—before we got clear of her.

Q. That is, she kept on her course till she got up about Magazine Point?

A. Yes, sir; before we got clear of her.

Q. What do you say about the parting of the lines; did the whole tow come up?

A. Yes, sir; the barge didn't go from alongside the propeller; I didn't know that we parted any of the lines; we might have parted the towline; the heft of the blow might have done it, but she was not carried away from the propeller; the barge was alongside the propeller and was alongside of it till we got clear of him.

Q. What is the width of the channel there—say from Magazine Point down to below West Point?

A. It is a channel from shore to shore. The lower part of Magazine Point is a channel. There is a little point makes out just above West Point dock which is pretty near bare at low water. I should think the river there is, taking it at the Government dock, may be 1,000 feet wide. It is not much more than twice the length of the steamboat "St. John" in width there.

Q. What is her length?

80 A. She is 417 feet, I think, over all. The river is not much wider than twice the length of her there; it is not over 1,000 feet wide there anyway, I shouldn't think.

Q. How was she in reference to the shore at the time of the collision?

A. I should think about in the middle of the river.

Q. When you saw her you thought she was hugging the west shore?
A. When I first saw her I thought she was best to the westward.
Q. Will you state what you could have done after receiving no answer from the Pluto, which you did not do, to avoid the collision?
A. All I could do was to stop my steamboat to avoid the accident.
Q. And backing?
A. Yes, sir; I could not prevent it.
Q. You could not, after blowing one whistle, have gone either to the right or the left of her?
A. No, sir.
Q. You know the pilot of the Pluto?
A. No, sir; he is a stranger to me; I know him when I see him; I didn't know him at that time; I never saw him before, that I know of; since that I got a little acquainted with him.
Q. Did you meet him at the office of the People's Line after the collision?
A. Yes, sir.
Q. Did you have any conversation there, in presence of Mr. Smith, with him?
81 A. Yes, sir; we talked it over there in the office, how the collision took place.
Q. Did you ask him why he didn't answer your signals?
A. Yes, sir.
Q. What did he say?
A. He said he did answer them as soon as he could get where they were. I asked him where he was, and I understood him to say he was on the barge's forward deck and had the deck-hand at the wheel, but since that he says he was not.
Q. What reason did he give for not answering the signals, if any?
A. He said he answered them as soon as he could—as soon as he could get aboard.
Q. Who was the engineer of the St. John at that time?
A. Joseph Wright.
Q. The bells that you rung were answered by the engineer?
A. Yes, sir.

Cross-examined by Mr. Donohue:

Q. You were in the People's Line eight years before this?
A. Yes, sir; I think I was there six or eight years.
Q. Have you been in their employ since?
A. I left them that fall.
Q. Did you leave, or did they decline to employ you?
A. No, sir; I left—the next spring I left them.
Q. They never employed you then?
A. No, sir; I never asked them for a situation.
82 Q. Have they helped you in fitting up your place?
A. No, sir.
Q. None of them?
A. No, sir.
Q. Have you not so stated it that some of them helped you to fit up your place?
A. Never.
Q. But you have not been in their employ since?
A. No, sir.
Q. Have you not stated, in speaking to the pilot or captain, that the People's Line ought to pay for this collision; that they were wrong?

A. No, sir; I never did.
Q. You are certain of that?
A. Yes, sir.
Q. Did you make the statement, or any statement, to Mr. Jones about this collision, about the time it occurred?
A. No, sir; not at the time it occurred.
Q. Well, about the time?
A. No, sir; I think not, I won't be certain. I remember going to his office, but it was some time afterwards.
Q. When the suit commenced about it?
A. I came down here to attend the lawsuit, and I was to Mr. Jones' office.
Q. You don't recollect when that was?
A. The first time—I forget now when it was; it must have been a couple of years ago, I guess.
83 Q. Did you make a statement to Mr. Smith; is he the agent of the company?
A. No statement at all.
Q. You didn't tell anybody how it occurred?
A. Only the understanding we had when the propeller's crew came to our office; then we made a statement.
Q. And whatever you stated then you believed to be correct, I suppose?
A. Yes, sir.
Q. That was when the propeller's crew went to your office, before any lawsuit was brought?
A. Yes, sir; right away after it happened.
Q. Now, you swear positively that the barge was not knocked away from the side of the propeller?
A. I swear positively she was not.
Q. You left it there all the time, and she was not knocked away?
A. She was not knocked away; no, sir.
Q. Let me get distinctly whether you saw the propeller's tow first, or her light?
A. I saw her stern lights first.
Q. And the whistle which you gave was given before you saw anything but the stern lights, the two whistles?
A. I seen the boat, of course.
Q. Did you whistle before or after you saw the boat first?
A. I seen the boat before I blowed the whistles.
Q. Then it is not the fact that the only thing you saw was the after light before you blew the whistles?
84 A. I seen the after lights before I seen any of the rest of the boat.
Q. But you saw the boat before you blew the whistles?
A. I saw the boat when I blew the whistles.
Q. When you first blew the two whistles you saw the boat?
A. Yes, sir.
Q. Could you make out it was a tow?
A. I knew it was a tow of some kind, I knew it was not a passenger-boat, because it was not the right time of night for a passenger-boat.
Q. But when you did blow your whistles, then you had the boat or the tow in view?
A. I saw the boats before I blew the whistles.
Q. The first whistles?
A. I saw the boats before I blew the whistles.

Q. Where were you when you blew the first whistles—at the place you have marked "No. 1" on the map?

A. There is where I was when I first saw the boat.

Q. Was that where you whistled?

A. I whistled very soon afterwards, I should think; I could not tell you exactly to the minute or second.

Q. As soon as you could do so?

A. Yes, sir.

Q. (Referring to map.) There is "No. 1;" do you mean to say that, placing those two boats at No. 1 & No. 2, you could see that boat across West Point?

A. Yes, sir.

Q. You swear so positively?

A. I think I can; I can see across the point.

85 Q. You can see that vessel as far down the point in proportion as that?

A. Yes, sir; about abreast of the boat-house.

Q. And about that proportionate distance of the river, you being in the relative position off Magazine Point, you swear you could see across there?

A. Yes, sir; that is, I could see her stern light; that was high up.

Q. You did see the boat there?

A. Yes, sir; I saw the boat.

Q. Where were you when you saw the boat?

A. Well, I told you I was somewhere in the neighborhood of Magazine Point.

Q. "No. 1" is where you were when you saw the boat?

A. Yes, sir.

Q. And you did see the boat at that time where you have marked her here?

A. Yes, sir.

Q. Your recollection is distinct about that, is it not?

A. Well, I have told you so.

Q. Just as soon as could be after, you whistled, did you?

A. Yes, sir.

Q. How far is it from that point you have marked as Magazine Point, where you were at that time, to the Government dock at West Point?

A. It is right opposite, you know.

86 Q. The place where you were would be right opposite the Government dock at West Point?

A. Yes, sir.

Q. How far would it be from where you were then to where you turned around West Point?

A. I don't know.

Q. About?

A. I suppose it is in the neighborhood of a quarter of a mile.

Q. And about that time how far was this propeller, in your judgment, below the point?

A. I should think she was about as far from West Point when I first seen her as what we were.

Q. As what you were above it?

A. Yes, sir.

Q. At that time how were you heading when you blew the whistle?

A. At that time we were heading about E. by S., I suppose.

Q. Did you keep on that course all the time?

A. I did—oh, no, of course not; I had to turn West Point. We were turning West Point when the collision happened.

Q. At the time you were turning West Point you were swinging around?

A. Yes, sir.

Q. And swinging towards the westward?

A. Yes, sir; we were swinging towards the westward, in the act of turning the point.

Q. You were swinging to the westward; how far is it from the point there to across there, as far as you can go towards the railroad track?

87 A. I should suppose about a quarter of a mile from West Point across to the railroad.

Q. To the railroad track, or as far as you can go in the water?

A. The railroad track is right at the channel.

Q. That is, it is built to the channel?

A. Yes, sir.

Q. Quarter of a mile?

A. Yes, sir; I should think so, to the best of my knowledge. It is a little more, if anything.

Q. And up to the time you turned West Point and got to the point of the collision, you had been swinging around to the westward; is that so—backing and swinging around?

A. We were turning the point.

Q. And the collision, in your judgment, took place about the middle of the river?

A. Somewhere in the neighborhood of the middle of the river, I should think.

Q. Do you think it was to the westward of the middle?

A. Well, I don't know; no, I guess not. I guess it was about in the middle as near as I can get at it.

Q. And you say the propeller, so far as you saw, didn't alter her course from the time you first saw her?

A. She had not got to the point yet.

Q. As a matter of fact, were you, or were you not, mistaken in the fact of your first supposition that she was nearer to the west shore?

A. I thought she was nearest to the west shore.

Q. That turned out a mistake, didn't it?

A. No, sir; she was about in the middle of the river.

88 Q. Was that nearest the west shore?

A. No, sir; it was not.

Q. Then were you, or were you not, mistaken in the fact of your judgment, when she was close in to the west shore?

A. She looked as though she was from where I was first.

Q. You saw her then and thought she was nearest to the west shore?

A. Yes, sir.

Q. Didn't you find you were mistaken in that?

A. She might have been nearest the west shore when the collision took place.

Q. But your judgment is she was not?

A. I think we were about in the middle of the river.

Q. But you thought before that, when you first saw her, she was nearer to the west?

A. Yes, sir.

Q. And it was then the fact that you thought she was further in to the westward when you had blown the whistles?

A. No, sir; we always go to the eastward when we turn West Point. Those big boats turn West Point very hard; you cannot turn short. We always go to the east when we get there.

Q. Could you not turn them close around West Point by slowing them at Magazine Point?

A. You would not want to slow them at Magazine Point.

Q. (Referring to map.) Suppose you slowed there, could you not have headed along down so?

89 A. You could if you wanted to.

Q. Until you get to Magazine Point, right off here—which I call the bluff of the point—some distance to the north of where you were, what is your usual course down the river?

A. Well, take it from Butler Hill down, our course is S. SE.

Q. Then, as you came along this time, and as you opened Magazine Point, you hauled E. by S., did you?

A. Yes, sir; E. by S.

Q. Was that hauling before or after you had seen this propeller?

A. Oh, it was before. I had straightened down.

Q. Was there anything when you got off Magazine Point to have prevented you keeping more to the westward?

A. No, sir; there was nothing in the way at all, in sight.

Q. I am speaking before you changed your course, when you got down there, on your S. SE. course; was there anything to prevent you from having kept to the westward, and turn West Point close?

A. You cannot run right down to West Point and turn one of them boats right around there; you have got to go off there, especially on flood tide. It would run you clear over on the east shore.

Q. Was there anything to prevent you going down that way?

90 A. No, sir; only the propeller coming up. You asked me *me* if there was anything in the way going down there, and I say, yes; the propeller was in my way going down there.

Q. Did you see her when you were on the south-southeast point?

A. No, sir.

Q. When you got on the S. S. east course where would that have brought you, with reference to West Point?

A. Brought you ashore.

Q. What would be the most southerly course you could take to clear the point and give it a fair berth?

A. I have never tried it.

Q. You cannot tell me, then, being in the position you have marked on here, when you changed your S. SE. course; you cannot tell me any course different from the one you did take?

A. No, sir; that is our regular course, the course of the river.

Q. Where would that bring you, suppose you were E.-by-S.?

(The position marked on the map as "No. 4," where the witness says an E. by S. course would bring him.)

Q. Where would E. SE. bring you?

A. That would not bring me anywhere; it would bring me foul of the rocks.

Q. An E. SE. course would bring you on the rocks at West Point?

A. It would bring me close to the rocks.

91 Q. Where would it bring you?

A. I don't know where it would bring me.

Q. You mean to say the position you occupied at No. 4 there, that, from that way down, the only course you could take to round West Point with would be E. by S?

A. That is the course down the river.
Q. Is it the only course?
A. If there is anything in the way you have got to sheer clear of them.
Q. You cannot come any more to the south than E. by south?
A. No, sir.
Q. Suppose you had slowed the St. John at Magazine Point?
A. I did slow her there.
Q. Before you took your E.-by-S. course?
A. No, sir; it was after I took my course.
Q. Where were you took your E.-by-S. course?
A. I was opposite Magazine Point. I had turned the point—straightened down.
Q. How long did you run on that course before you slowed her?
A. I slowed her right away.
Q. Before you blew the two whistles?
A. I could not say whether I slowed her down before I blew the two whistles. It was not a great while before them.
Q. Did you slow her down for this propeller?
A. Yes, sir; we are always in the habit of slowing her going around West Point whether there is anything in the way or not.

92 Q. Then the slowing is usually down there?
A. Yes, sir; going up and going down with these boats.
Q. The slowing is usually down there without regard to anything?
A. Yes, sir; for fear of something being in the way.
Q. You say the distance from where you blew your two whistles and West Point is about a quarter of a mile—your first two.
A. I should think it was about a quarter of a mile.
Q. And it was about half a mile off—the propeller?
A. Somewhere thereabouts.
Q. That is, each being half a mile from the point?
A. Yes, sir.
Q. Can you tell me how long you ran after you blew your first two whistles before you did anything else?
A. Oh, I don't know; we ran a very short time.
Q. Well, about how long?
A. Well, a very short time; I don't know; one of them big boats hold their way.
Q. Can you give me any estimate of how long you were?
A. It might have been a minute or so, or half a minute; I could not tell you exactly. I know it was long enough to give them plenty of time.

Q. And the next thing you done was to blow two more?
93 A. Yes, sir.
Q. Where were you when you blew the second two?
A. We were going down pretty near to West Point.
Q. Had you not got to West Point?
A. I don't know; but we were down near the point when we blew the other two.
Q. When you blew your first two whistles you were pretty near?
A. The first two whistles I blew off Magazine Point when we opened down, when we first saw the steamboat, and the other two whistles we blowed somewhere in the neighborhood of West Point; I know we had stopped our boat then.
Q. Had you stopped your boat when you blew the second two whistles?
A. I think we had.

Q. Two whistles mean that the party who blows them is going to the left?

A. Yes, sir.

Q. And at that time you had stopped your boat and were not going to the left?

A. We were going to the left.

Q. What change had you made in order to go to the left?

A. I had not made any change. I had made up my mind when I first saw him to go the east. I had not made any change, but I had made up my mind to go to the east of him.

Q. From the time you first saw him until the time of the collision, the only change was swinging around West Point to the west?

94 A. That is all.

Q. Now, you say when you went into the pilot-house there were three men there?

A. Yes, sir.

Q. Did they all remain there?

A. Yes, sir.

Q. All the time of the collision?

A. Yes, sir.

Q. How long had they been there before you had been there?

A. They had been there all night.

Q. And continued up to this time—up to the time of the collision?

A. Yes, sir.

Redirect:

Q. How high is the pilot-house of the St. John above the main deck?

A. In the neighborhood of 28 feet, I think; it is 24 or 28 feet, I think, above her deck.

Q. You were never discharged by this company as pilot?

A. Yes, sir; I was discharged one year.

Q. When?

A. I was discharged, I guess, in 1861 or 1862.

Q. What employment did you go into then?

A. I went capt. of the steamboat Ohio.

Q. On the river?

A. Yes, sir.

Q. But, after this collision, you continued during the season of navigation?

A. Yes, sir; they hired me over again.

95 Q. Let us get as near as we can your course in turning West Point with the St. John; you go nearer the eastern or the western shore ordinarily in coming down?

A. In coming down we generally turn pretty well to the eastward. If you go down to the point and turn West Point close around it, oftentimes little vessels will be drifting along there and be right on your way, and if you go off in the river pretty well you can see down it & see what you are doing.

Q. Why do you slow usually at Magazine Point?

A. Well, so as to give the boat a better chance to turn the point; then if there is anything in the way you can handle your boat; you see it is a pretty short curve and you get onto a vessel before you know it, and if you are going with a pretty good speed you will run her down before you can do anything, & if you slow your boat pretty well up the river you have a chance to handle her and avoid the accident.

Q. Your general course from Magazine Point down you come around a little on the swing all the time?
A. Yes, sir.
Q. It is a gradual swing?
A. Yes, sir.
Q. Your ordinary course would take you nearer the east shore than the west?
A. Yes, sir.
Q. It brings you around the point on the swing?
A. Yes, sir; in order to see down through the river we keep near to the east.
96 Q. At that time your judgment was she was nearer the west shore than the east at the time you rang the bells?
A. Yes, sir.

WILLIAM BULSON sworn on behalf of the respondents.

Examined by Mr. Jones:

Q. What is your business?
A. Boatman.
Q. How long have you been a boatman?
A. Well, 10 or 15 years; about 15 years.
Q. On what kind of a craft?
A. Most all kind; tow-boats & so on, and other boats. I never was on a sail craft; tow-boats & passenger-boats.
Q. Were you on the St. John at the time of the collision the barge in tow of the Pluto, spoken of?
A. Yes, sir.
Q. In what capacity?
A. A wheelsman.
Q. How long had you been wheelsman on the St. John?
A. One season.
Q. And on what other boats before?
A. I was on the Francis Skiddy two or three seasons.
Q. Were you on the Skiddy as wheelsman?
A. Yes, sir; running to Troy.
Q. Were you at the wheel at the time of the collision and before?
A. I was.
Q. When did you take your place at the wheel?
A. I took it at Albany.
Q. Who were with you at the wheel at the time of the collision?
97 A. Joseph Bonner, James Patterson, and Mr. Lake.
Q. When did Mr. Lake come on?
A. About one o'clock; that is his usual hour.
Q. Will you make a statement here of what you saw at about the time that you were at Magazine Point, and from that time onward until the time of the collision?
A. I don't know exactly the time.
Q. When did you first see the Pluto?
A. I think we were about one length below Magazine Point when I first saw her.
Q. Tell what you saw.
A. We saw the boat; Mr. Lake says, "slow her," I think, and I slowed her, and we blowed two whistles; there were two whistles blown and no answer from them; we ran on till we got, I suppose, within a length or two of West Point, and then blowed two whistles again, and stopped

her; and then Mr. Lake says, "I believe that fellow is coming into us," and says he, "let her go back," and there were two bells rung to go back; the propeller, I think, was coming straight up the river, about in the middle of the river, as near as I could judge.

Q. Were these bells obeyed?

A. Yes, sir; they were, I believe.

Q. You backed?

A. We backed.

Q. What next did you see or hear?

A. Then Mr. Lake halloaed to the propeller and asked him why he didn't stop his boat, and we were just about, I should think, half
98 a length from her—it might have been a little more—when there was a short whistle from the propeller. That is all the whistle we heard from her until the collision—until we came together.

Q. How long before the collision was it you heard that one whistle?

A. It was not half a minute; not more than half a minute; I don't think it was more than half a minute.

Q. Did you hear anything else from the propeller; did you hear any bells rung?

A. I didn't hear no bells; no, sir.

Q. Go on till they came together.

A. They came together, and then Mr. Lake says to the man, or to some one on board of the propeller, halloaed to him——

Q. How did they come together?

A. We struck her on her port bow on her larboard side.

Q. What was the effect of the blow upon both vessels?

A. I didn't feel anything on our vessel; I don't know what it was on the other vessel.

Q. How, if in any way, did it affect the motion of your vessel?

A. It might have thrown her head a little to the east; I think it did, with the tide and all; the tide was running pretty strong; in backing it would naturally throw her around a little; the tide runs pretty strong around West Point—half tide.

Q. What kind of a tide was it?

99 A. Flood-tide.

Q. What state was the tide?

A. About half tide, I think, sir.

Q. The time of the collision had you forward motion on the St. John?

A. I don't think we did have, sir.

Q. What was the apparent motion on the Pluto?

A. I could not say as to that, how fast she was going or anything of the kind, or whether she was going at all; I never heard no bell onto her; but they came together; she must have been a going, and with the tide; she had the tide under foot.

Q. About where will you place the point of collision in reference to the shore?

A. I should think we were just about on the middle of the river.

Q. Both vessels?

A. Yes, sir; as near as we could get there.

Q. And at about opposite what point of the river?

A. About opposite West Point.

Q. Just about opposite West Point?

A. Yes, sir; about on it; we were in the act of turning the point.

Q. You were on the turn?

A. Yes, sir; we were on the turn of turning the point.

Q. After you rung your two whistles to go to the left what other action could you have taken to avoid the collision than you did take?

A. We could not have taken any other that I know of; nothing more than to go back.

100 Q. After you heard the whistle from the Pluto could you do anything except to continue backing?

A. No, sir; we were too close by; it could not have been avoided then.

Q. You could not have avoided it then in any way?

A. No, sir; I don't think we could.

Cross-examination by Mr. Donohue:

Q. Did you see any change in the course of the propeller at all?

A. No, sir; I did not.

Q. You did not at any time?

A. I did not.

Q. You were at Magazine Point when you saw the propeller?

A. I think we were a little below it.

Q. Is it not usual to slow coming around West Point with the steamboat St. John?

A. We always do.

Q. About Magazine Point there?

A. About there or a little below it.

Q. Is it customary to do it?

A. Yes, sir; we most generally do it.

Q. Do you ever come down there without slowing?

A. No, sir; I don't think we ever do, not unless it is daylight; nighttime we never do.

Q. You are a night boat?

A. Yes, sir.

Q. In regard to the Government dock at West Point, how were you when you saw the propeller?

A. I would not say anything about that, because I don't know.

101 Q. I want to know how your estimate would bring you in reference to the Government dock?

A. I cannot answer that.

Q. You have given one estimate that you were about a length below West Point?

A. Yes, sir.

Q. How far would a length below Magazine Point bring you in reference to the Government dock?

A. Well, about 3 or 4 lengths of the boat.

Q. Above it?

A. Above it.

Q. From the time you first saw the propeller up to the time of the collision, was there anything done on your part except to swing to the westward?

A. No, to the eastward; we hadn't swung to the westward going around West Point.

Q. You heard the pilot's statement?

A. Yes, sir. When we are going around our head is swinging to the westward. That is correct.

Q. From the time you saw the propeller, wherever she was, the only change in your boat was swinging to the westward?

A. We were not swinging all the time.

Q. Can you tell me when you commenced or stopped swinging?

A. No, sir; I don't notice these things particular enough. I am not the pilot of the boat.

Q. When you came to Magazine Point, where you stated you first saw this propeller, you were then, you think, four lengths of your boat above, opposite the Government dock?

A. Yes, sir; that is, at West Point.

102 Q. How far were you out from Magazine Point in the river from the shore on Magazine Point side?

A. Well, probably, 200 feet from the Point.

Q. That 200 feet is on an estimate of how wide the channel is there.

A. I don't know how wide it is.

Q. Well, about. I want to get what proportion of the river you were out from the east side.

A. Do you mean from Magazine Point to the westward?

Q. Yes, sir.

A. Well, it is probably, I should judge it was, 5 or 600 feet.

Q. Five or 600 feet, the channel?

A. Yes, sir; the channel from shore to shore.

Q. And you were 200 feet off that out from Magazine Point?

A. Yes, sir.

Q. At this time can you tell what *cause* you were on?

A. No, sir.

Q. Can you tell what the course about there is?

A. No, sir.

Q. The pilot says up to the time you took your east by south course the course would be S.SE.

A. I never look at the compass; that is not my business.

Q. When you came around Magazine Point you don't recollect what your compass course was?

A. No, sir.

103 Q. Do you recollect what change you made in that course? I mean as you got around Magazine Point, do you recollect what change you did make?

A. Sheered to the eastward when we were coming.

Q. Can you form any estimate how much that sheer was?

A. I don't know as I could.

Q. Had you that sheer on when you saw the propeller?

A. We were sheering to the eastward when we saw the propeller.

Q. When did you commence sheering to the westward?

A. After we got down about half-way between Magazine Point and West Point then the wheel was hove hard over.

Q. Hard over how?

A. Hard astarboard; we hove her wheel coming around the point; that would send us to the eastward, and then we altered her when around the point; we didn't alter the wheel; we slowed our boat and stopped her, so our wheel was not stopped at all.

Q. As you came around Magazine Point you put your helm hard astarboard; had you swung your head to the east?

A. Yes, sir.

Q. Do you mean to tell me you didn't alter that wheel?

A. That was not altered; our boat was slowed & stopped.

Q. It was not stopped at the time you were coming around the point?

A. Of course it was not stopped at that point.

Q. You came around Magazine Point on a hard astarboard wheel?

A. Yes, sir.

104 Q. How long did you keep that hard astarboard?

A. We didn't alter our wheel.
Q. You didn't alter your wheel up to the collision?
A. No, sir.
Q. Will you tell me now, with a hard astarboard wheel, your vessel would swing to the west?
A. It would not swing to the west.
Q. You said a minute ago she was swinging after that time to the west. As you came around the point you put your helm hard astarboard and that swung you to the east.
A. Yes, sir.
Q. Do you mean to say you kept that hard astarboard helm until the collision?
A. I don't think we altered our course at all. I don't think we did.
Q. Will you tell me with a hard astarboard helm coming around Magazine Point, within 200 feet of the shore, where it would bring you, within quarter of a mile?
A. It would bring us to the east, provided we kept the boat agoing.
Q. You kept going quarter of a mile?
A. No, sir.
Q. She didn't stop when you slowed her, you said, at West Point?
A. I said above.
Q. Now you said above West Point?
A. Yes, sir.
Q. The pilot says the collision occurred at "No. 3," on this map; do you agree with him or not?
105 A. Yes, sir; it was a triffle below West Point.
Q. Some way or other that vessel had kept headway on her till she got down a little below West Point?
A. Yes, sir.
Q. Tell me how she got there on a hard astarboard helm.
A. The boat was stopped and backed; her rudder, I believe—her wheel hard astarboard and backing the boat—will heave her the other way.
Q. Didn't she keep her headway on till she got down below the point?
A. She would not sheer; the boat would stop and back.
Q. Your theory is, she had got down below the point of the place of the collision on a hard astarboard helm?
A. I don't think her helm had been aport.
Q. Your recollection of this is, that from the time you passed Magazine Point until you got down to the place of collision, all the time your wheel was hard astarboard?
A. I think it was.
Q. You had not taken or undertaken to take your sheer to come around West Point with?
A. No, sir; not yet.
Q. Do you ordinarily take a hard astarboard helm coming around Magazine Point?
A. We generally heave it over there; we don't alter our helm till we get to West Point.
Q. As you pass Magazine Point, you port your helm hard astarboard?
106 A. Yes, sir.
Q. And you keep that till you get to West Point?
A. Yes, sir; pretty near the Point, as a general thing.
Q. And then you put it hard aport?

A. Yes, sir.
Q. Did you do that on this occasion?
A. No, sir.
Q. You are certain of that?
A. Yes, sir; we had no occasion to do it.
Q. You swear you were swinging as long as your headway continued, to the eastward?
A. Yes, sir; I do.
Q. And you had not commenced any swinging to the westward at all?
A. Yes, sir.
Q. Who was in charge of this vessel?
A. The pilot.
Q. Would he be more likely to know the fact than you, or you than him?
A. I suppose he would more than I.
Q. How long is your boat?
A. *I* boat is 417 feet, I think, over all.
Q. Your recollection, then, is, that there are 3 or 4 lengths of your boat from the time you round Magazine Point until you get opposite the Government dock?
A. I think so.
Q. That is about 1,200 or 1,000 feet, that distance?
A. I think about that distance, as near as I can judge.
Q. How far from that to West Point is the distance, as near as you can judge?
107 A. That is pretty near there—up pretty near that.
Q. Your recollection is, that the Government dock and West Point are about together?
A. They are not far apart.
Q. Is the Government dock not there?
A. That is Magazine Point & this is West Point.
Q. Is the Government dock on the point?
A. It is above it.
Q. Is it not there?
A. I don't recollect these things about these docks, for I never noticed them. I had no occasion to do so.
Q. Then you don't know, as a matter of fact, where the Government dock you speak of is?
A. I know there is a dock just above the point—a very short distance above; I don't know how far; I could not say.
Q. Can you form any judgment?
A. No, sir.
Q. Can you form any proportion?
A. I could not say anything as to what the distance was between the Government dock and the point.
Q. Cannot you give us any idea how far it is up towards Magazine Point, towards West Point?
A. About quarter of a mile.
Q. What proportion of the distance the dock is up that way you could not tell?
A. I could not say.
Q. Did you see the propeller or her lights?
A. I saw the barges; I didn't see the propeller.
Q. You saw the barges when you first saw them?
A. Yes, sir.
108 Q. They were then how far below the point?

A. Well, I don't know how far below the point they were. Not but a short distance below the point.

Q. Can you give us any judgment?

A. Well, probably it might have been not quite quarter of a mile; I should not think it was.

Q. Was your attention first called to them, or did you see them yourself?

A. Well, I don't recollect that.

Q. The first thing now you recollect distinctly is having some reference made to them by the pilot?

A. Yes, sir.

Q. And you saw them at the time?

A. Yes, sir.

Q. What lights did you see on the barge or steamer?

A. I seen her stern lights.

Q. No other?

A. No, sir; I don't think I did.

Q. Did you see any other lights at any time?

A. I didn't see any other light but the stern light.

Q. That is straight below the point?

A. Yes, sir; about in the middle of the river.

Q. About in the middle of the river?

A. Yes, sir.

Q. Did you judge, when you first saw them, that she was about the middle of the river?

A. I thought she was.

109 JAMES PATTERSON sworn on behalf of respondents.

Examined by Mr. Jones:

Q. What is your occupation?

A. At this present time I have been farming.

Q. Before that, what has it been?

A. Boatman.

Q. How long?

A. About 12 or 15 years.

Q. What were you doing as boatman, on what kind of boats, and where?

A. On sloops, schooners, steamers, tow-boats, and passenger boats.

Q. Were you on the St. John at the time of the collision between her and the Pluto?

A. Yes, sir.

Q. What was your position?

A. Wheelsman.

Q. At the wheel?

A. Yes, sir.

Q. When did you take the wheel?

A. I took the wheel about 8 o'clock in the evening, when we left Albany.

Q. Who was with you at the wheel?

A. Mr. Lake, Mr. Bulson, & Mr. Bonner, at the time of the collision.

Q. Will you state what you saw and what was done on board of your vessel from about the time you were opposite Magazine Point till the time of the collision?

A. At Magazine Point—I think we might be a little below it—we saw a boat coming up the river. About the time we turned Magazine

110 Point, or a little below it, we saw a vessel coming up the river, and Mr. Lake spoke & said, "There is a boat coming up the river;" and he said, "blow two whistles." I blowed two whistles, and they didn't answer, and he said to Mr. Bulson to slow her, and he rang one bell to slow her.

Q. At that time?

A. Yes, sir. Shortly after that I blew two more whistles. Mr. Lake told me to blow two more whistles. I blowed two more whistles, and then he told Mr. Bulson to stop the boat. He rang another bell, and stopped her.

Q. Up to the time of the blowing of the two last whistles had you heard anything from the propeller?

A. No, sir; we did not. A very short time after that he told him to ring two bells to back; he rang the bells, for he stood by him.

Q. Two bells to back him?

A. Yes, sir.

Q. Up to that time had you heard anything from the Pluto?

A. No, sir.

Q. What next; when did you hear anything from her?

A. Just before we struck, a little while, Mr. Lake sang out to him why they didn't stop their boat; & and there was another bell rung and a short whistle.

Q. At about the same time?

111 A. About the same time. I could not now recollect which was first, but it was very near at one time.

Q. What was the St. John doing at that time—when you heard that one whistle?

A. She was backing.

Q. After the two bells to back?

A. She was going back when we struck.

Q. And soon after the collision came?

A. Yes, sir.

Q. How near were you together at about the time of that one whistle which came from the Pluto?

A. I don't suppose we were over 100 or 150 feet apart. I could not tell exactly, but somewhere about there.

Q. About what part of the river, in reference to the shore, was the collision?

A. I could not say as to that; somewhere in the middle of the river.

Q. It was in the middle of the river?

A. I should judge it was.

Q. About opposite what point?

A. About opposite West Point.

Q. What was the effect of the blow upon the St. John and the other vessel? Which way did they go?

A. Well, we swung to the eastward, the tow and the St. John together. The St. John's bow was in the barge some 8 or 10 feet, I suppose, and they went up the river together some way.

Q. Were you carried up the river?

A. We went up above West Point again?

Q. Were all the vessels together as you went up after the blow?

A. Yes, sir.

112 Q. Did you think you had stern-way on the St. John at the time of the collision?

(Obj't. to as leading.)

Q. What else could you have done to avoid the collision than backing?

A. We could not do anything more.

Q. After you blew the whistles?

A. No, sir; they were *to* close together.

Cross-examined by Mr. Donohue:

Q. Is it usual to slow coming around Magazine Point?

A. Yes, sir; with them barge boats it is.

Q. With that boat?

A. Yes, sir.

Q. Did you ever know her to come down without doing it?

A. I don't recollect, without some nights we were detained in the fog.

Q. The pilot, Mr. Lake, says he don't know whether the slowing was before or after you saw the propeller.

(Obj. to; obj. sustained.)

Q. Are you certain it was before or after you saw the other propeller that you done your first slowing?

A. I am not certain whether it was before we blew the whistle, or after it?

Q. Mr. Lake locates the collision at "No. 3" on the map; do you agree with him?

A. Well, I suppose it was about West Point.

Q. Then you do not agree with him?

A. I suppose about West Point.

Q. Is that about West Point, or ain't it?

A. It is near West Point.

113 Q. What is your judgment as to that being the point of collision?

A. I suppose it is about there, somewhere near there; I could not swear positively.

Q. But according to the best of your judgment, you think that would be so?

A. I suppose so.

Q. Now, as you passed Magazine Point, how far off the point did you pass?

A. Off Magazine Point?

Q. Yes, sir.

A. Well, may be 2 or 300 feet; I was not paying any attention to about how far you were off Magazine Point.

Q. You cannot judge or form any opinion what proportion of the river you were out from the point?

A. We might be 300 feet; probably we might be more.

Q. What proportion of the river would that be across?

A. I don't think it would be one-third of the way across.

Q. Would it be nearly one-third?

A. Somewhere near that, from what I have heard people call the distance; I never measured it.

Q. As you came around Magazine Point, before you made any change up to that point, what course had you been running—that is, before you made your change?

A. I think the course was SE. before we came to Magazine Point.

Q. Then what was your course?

A. E. by S., I think.

114 Q. In order to do that you put your helm hard astarboard?

A. Yes, sir.

Q. That is, of course, you didn't change at once, turn the vessel right round on a point, but you put your helm hard astarboard to get your vessel E. by S.?

A. Yes, sir; to turn that point you have to starboard your helm.

Q. You got your helm hard astarboard; did you make any change in that helm before the collision?

A. No, sir.

Q. Are you sure of that?

A. Yes, sir.

Q. Did you get any further down the river than the point of the collision at any time before the collision; up to the time of the collision had you got further down the river than the point of the collision?

A. After the collision we went up the river.

Q. But up to the time the vessels came together had you got any further down the river than the point where the collision took place?

A. I don't understand that.

Q. Suppose "No. 3" to be where the collision occurred, were you at any time up to the collision further down that up to the time the vessels got together; you know where the collision took place?

A. The collision took place at West Point, I thought, according to the best of my judgment.

115 Q. At any time up to the collision were you below the point of the collision? Did you get any further south than the point of the collision before the two vessels came together? Supposing that to be the point where the two vessels came together, had you ever, up to the time of the collision, got anything further down the river than that?

A. I don't understand you.

Q. The two boats came together there, supposing that to be the place?

A. Supposing that to be the place.

Q. Had you got any nearer New York, at any time before the collision, than that point, "No. 3?"

A. Before the collision we could not get anything further towards New York.

Q. When you were at "B" as you came around Magazine Point, your course would be SE., you say?

A. Before we came to West Point.

Q. Up to that time your course would be SE., would it?

A. Yes, sir; till we came to Magazine Point, before we commenced to turn.

Q. Then, when you round Magazine Point before your course would be on a hard astarboard helm after that?

A. It would be E. by S.

Q. It would be on a hard astarboard helm?

A. It would.

Q. You mean to say you put your helm hard astarboard at this place, off Magazine Point, and didn't change the helm till the time of the collision. Is that so?

116 A. Yes, sir.

Re-direct:

Q. How was your helm before you reached Magazine Point?

A. Before we came up to Magazine Point there is nearly a straight course; there is not much shifting of the helm one way or the other.

Q. (By Mr. Donohue.) You carried what is called a steady helm up to that point?

A. Yes, sir; unless there is something on the way.

JOSEPH BONNER sworn on behalf of respondents.

Examined by Mr. Jones:

Q. What is your business?

A. Boatman.

Q. How long have you been a boatman?

A. About 8 years.

Q. On steamboats?

A. Yes, sir.

Q. Were you on the St. John at the time of this collision?

A. Yes, sir.

Q. What were you doing?

A. Wheelsman in the pilot-house.

Q. You came on there about when the boat left Albany?

A. Yes, sir.

Q. Now, you recollect the collision. Tell us what you know about it, and before the collision, when you were about opposite Magazine Point, what you saw and heard?

117 A. We came down about abreast of Magazine Point, or a little above, and we discovered a boat coming up, supposed to be a tow, and the pilot gave orders to blow the whistles twice—for the boat coming up the river. It was blown—the whistle was blown—and then he gave orders to slow the boat. It was slowed; we didn't get no answer from the boat coming up and he gave orders to blow the whistle twice again. It was blown; we got no answer yet, and then he stopped the boat and set her backing. Pretty soon after that we heard one whistle from the propeller; heard her ring one bell.

Q. What did you do on the St. John after you blew the first two whistles?

A. Nothing but put her helm hard up.

Q. (By Mr. Donohue.) Which way was that?

A. Starboard.

Q. (By Mr. Jones.) Was she slowed, or stopped, or backed? Tell us what was done on the St. John?

A. I have told you once.

Q. And about what point in the river was the collision?

A. About abreast of West Point.

Q. In what part of the river?

A. Pretty near the centre of the river, I should think.

Q. What was the effect of the blow upon the tow and your vessel? Which way did you go after you struck?

A. She hauled us up the river a little, if anything.

Q. Did you hear anything from the Pluto except that one whistle that you speak of?

118 A. I heard nothing from the Pluto except one whistle and one bell, and that was instantly before they struck.

Q. How was the St. John working at the time you heard the whistle and that bell?

A. She was backing.

Cross-examined by Mr. Donohue:

Q. Did you see the Pluto before or after you came around Magazine Point?

A. I seen her both before and after, just as we were turning the point I first discovered her.
Q. That is, just as you were at the point?
A. Yes, sir.
Q. You saw the Pluto then at that time, boat and all?
A. Boat and all?
Q. Yes, sir.
A. I saw lights there; I didn't know where it was.
Q. You saw a tow there?
A. Yes, sir; that is the idea; I saw a tow there.
Q. Is it not customary to slow as you come around Magazine Point?
A. Well, yes, it is sometime.
Q. Is it not always?
A. As a general thing steamboats slack there and slow.
Q. Don't the St. John always, at night, slow coming by there?
A. I don't believe she does, not always, except they discovered something in the way. There has been times when she went around there without slowing, but it is not very often.
119 Q. In the night-time?
A. Yes, sir; but not very often; she might have done it once probably out of 100 times.
Q. Do you recollect any time when Mr. Lake was in charge that she did it?
A. No, sir; I don't recollect anything about it.
Q. Can you tell whether she slowed first or you saw the lights first?
A. I saw the lights first.
Q. Are you distinct about that?
A. Yes, sir.
Q. Before what—before you slowed?
A. Yes, sir; I saw the lights before we slowed.
Q. (By Mr. Donohue.) How far below West Point did you see the lights?
A. I could not tell you.
Q. A little distance?
A. Yes, sir.
Q. Pretty near the point?
A. Some distance below the point.
Q. What do you call "some distance?"
A. I could not tell you, exactly.
Q. Give us some estimate.
A. I cannot do it.
Q. You cannot give any estimate of how far you were off Magazine Point?
A. No, sir.
Q. You cannot tell how far out in the river from Magazine Point you were?
A. I cannot tell exactly.
Q. Can you tell how far below Magazine Point, or had you got below Magazine Point, when you slowed?
120 A. I slowed about abreast of Magazine Point.
Q. Is your recollection distinct about that?
A. Yes sir.
Q. And your recollection, then, is, you discovered the lights before that?
A. Yes, sir.
Q. How far out, at that time, was the tow from the shore?

A. I don't know.
Q. You can form no judgment?
A. No, sir.
Q. And can form no judgment of how far below West Point?
A. No, sir; I cannot tell.
Q. Can you form any judgment as to which shore she was nearest?
A. Well, I should think she was in the middle of the river.
Q. Did you think so at the time you first saw her?
A. Yes, sir.
Q. Then you didn't think she was nearer the New York shore when you first saw her?
A. No; I could not tell anything about her.
Q. You blew the two whistles, and that meant to go to the left. As you came around Magazine Point you came around on a hard astarboard helm, don't you?
A. Yes, sir.
Q. Don't you have to commence putting the helm hard astarboard before you get to the point—that is, the wheel?
121 A. That is according to how close you want turn the point.
Q. Don't you generally do it?
A. Sometimes, and sometimes we do not.
Q. How is it generally; do you generally do it, or don't you generally do it?
A. It depends according to the Point, if there is anything in the way.
Q. If there is nothing in the way, you starboard your helm as you come to the point?
A. Yes, sir.
Q. Because you want to get your vessel turned immediately as you come round the point?
A. Yes, sir.
Q. And that hard astarboard helm is to swing to the east?
A. Yes, sir.
Q. You hard astarboard as you came to the point this time, didn't you?
A. Yes, sir.
Q. Did you hard astarboard first, or did you whistle first?
A. I cannot tell exactly.
Q. Is it not usual to commence turning your helm before you get to that point?
A. Not before we get to it.
Q. How long does it take that boat to commence minding her helm?
A. She minds her helm very quick, but I cannot tell how long it would take her.
Q. Suppose you are on a steady wheel, you understand that?
A. Yes, sir.
122 *Q. Suppose you are on a steady wheel, you understand that?*
A. Yes, sir.
Q. Suppose you are on a steady wheel, how long will it take that boat before you can get a sheer on her, as to length?
A. I don't know how long; a very short time.
Q. Have you never tried?
A. No, sir; I never keep no account of time.
Q. Can you commence to get a sheer on her in her own length?
A. I don't know; I know she minds her helm very quick.
Q. But you don't know?

A. No, sir.

Q. Can she commence to get a sheer on her in two lengths?

A. Yes, sir.

Q. I want you to tell the court whether you mean to be understood as saying that coming right with a steady helm, nothing in the way, you wait until you are opposite that point before you commence to turn your wheel to the east?

A. I did not say that.

Q. When do you commence starboarding your wheel; you commence starboarding above the point?

A. Not above the point; coming to the point, I should say.

Q. You are not coming to the point when you are opposite it; where do you commence starboarding your helm, supposing "O" to be the point?

123 A. If "O" was the point, the wheel would be starboarded before we get there.

Q. How far above "O?"

A. I could not say.

Q. When do you commence putting the spokes over first?

A. Probably two lengths above Magazine Point.

Q. Then the operation of turning your wheel to starboard commences about two lengths before you get to Magazine Point?

A. I didn't say two lengths; I said it might be two lengths, or about that.

Q. Did you pursue any different course on this occasion than your usual one?

A. No, sir.

Q. From the time you starboarded, you believe, till the collision, did you keep helm hard astarboard?

A. Yes, sir.

Q. From the time that you stated, to perform that operation the wheel was partly put to hard astarboard, and it didn't change in any way or at any time up to the time of the collision?

A. I told you once it was not changed.

Q. Then you came round Magazine Point, or, after you got around it, you came there on a hard astarboard helm?

A. I said so.

Q. And continued that hard astarboard helm up to the collision?

A. Yes, sir; to the best of my opinion.

Q. "No. 3" on the map is where the pilot said the collision
124 occurred. Do you or do you not agree with him in that?

A. I should think that was about the place. It might have been a little higher up.

Re-direct:

Q. When you say you didn't change your wheel, do you mean anything more than you didn't port it—that you kept it hard astarboard all the time—or did you let it run up?

A. I might have slackened a little on it; we didn't heave the wheel the other way that I know.

Q. I want to know what you mean by the term "changing the wheel?"

A. I don't know whether we might let up a spoke or so. That is done most generally. I don't know anything about it, but I don't think we did.

JOEL WRIGHT sworn on behalf of respondents.

Examined by Mr. Jones:

Q. What is your business?
A. Engineering.
Q. What kind of an engineer?
A. Steamboat engineer.
Q. Were you on the "St. John" at the time of this collision as engineer?
A. I was, sir.
Q. Licensed engineer?
A. Yes, sir.
Q. Where were you at the time of the collision?
A. I was in the engine-room.
Q. In charge of the engine?
A. Yes, sir.

125 Q. State in reference to the bells that were rung in the pilot-house to you prior to the collision. You know there was a collision there?

A. I heard there was; I didn't see it. I was placed where I could not see it.
Q. When was your attention first called to it?
A. When I heard the bells rung. I heard the bell rung to me to slow the engine.
Q. The first was to slow it?
A. Yes, sir.
Q. What was the next bell?
A. To stop.
Q. What other bells, if any?
A. He rang two bells to go back.
Q. How near were those bells between each other?
A. They might have been a minute apart—about a minute.
Q. Were the bells promptly obeyed?
A. Yes, sir.
Q. Take the two bells to back, what was the action of your engine after that bell? What revolutions, if any, did it make backwards?
A. How many did she make?
Q. Yes, sir, before you had any other order?
A. I could not exactly tell it is so long ago. I should think she made some 15 or 16 turns back. I should think the boat had stern-way on when he rang for me to stop backing her.
Q. At about what time was that bell to stop backing rung? was it before there was any concussion or collision?

126 A. It was before I felt any jar from our boat; before I felt the jar from our boat we were going back, and at the time I felt the jar when we were backing still.

Q. You don't know how many revolutions the engine had backed before you heard or felt the jar after these two bells were rung to back?
A. I don't know; I could not tell exactly; I should think it must be as many as 10 or 15 times.

Cross-examined by Mr. Donohue:

Q. You got the order to slow—it is customary to get an order to slow coming around West Point or Magazine Point?
A. Most generally, when the pilot sees fit to do so.
Q. It is generally done?
A. Yes, sir, most generally so.

Q. In daylight you don't do it?
A. I have heard them rung there in day-time, when we have been behind time, or something in the way; but most generally they slow coming round West Point.
Q. You don't exactly know where the slowing is?
A. No, sir.
Q. After you got that bell to slow, you slowed down; how long does it take you to slow?
A. Just as quick as I can put my hand on the lever and shove right down on it.
Q. How many do suppose you could count before you got the order to stop?
A. I suppose I could count very near sixty, if I spoke pretty fast.
Q. (Referring to watch.) Will you tell me from now how long?
127 A. Now, stop.
Q. Tell me how long it was now before you got the first order?
A. Now, stop.
Q. That would be less than 15 seconds.
A. I can handle her very quick.
Q. You know when you got the order to slow?
A. Yes, sir.
Q. And you performed that order?
A. Yes, sir.
Q. I want you to say "Now"—I want you to think in your own mind—to count along until you got the next order?
A. Now, stop—just as near as I can come to it.
Q. That is seven seconds, till you got the next order?
A. Yes, sir.
Q. How long does it take you to stop?
A. It would take just about a second; just as quick as I can pull the lever over.
Q. Don't the engine take a turn?
A. The way of the boat will turn the wheel around.
Q. Do you mean to say that engine will stop in one second?
A. I would not swear to that.
Q. Will it stop in five?
A. Yes, sir; I can stop her in five easy enough. I can check her.
Q. (Referring to watch.) Will you tell me from the time that you got the order to stop, how long it was till you got the order to back?
A. Now. (Five seconds.)
128 Q. That was the period, in your recollection, of about the time that elapsed?
A. Yes, sir.

PERRY C. SMITH sworn on behalf of respondents.

Examined by Mr. Jones:

Q. What is your employment?
A. I am agent of The New Jersey Steamboat Company.
Q. The St. John belongs to that company?
A. Yes, sir.
Q. Do you recollect an interview at the office of that company known as the People's Line, ordinarily?
A. I do.
Q. Between the pilot of the Pluto and Mr. Lake, the pilot of the St. John, after the collision?

A. They were then making their statement of the case, together with the agents of the Pluto and the agent of the barge.

Q. Was there any conversation at that time in reference to the reason given, or otherwise, by the pilot of the Pluto, for not answering the whistle of the "St. John;" if so, state what it was?

A. In the course of the conversation or argument between Mr. Lake and the pilot of the Pluto, Mr. Lake asked him why he didn't answer his signals; he said he did as soon as he got into the pilot-house; Mr. Lake asked him where he was; he said he was out forward. When they had their conversation together on that, Mr. Lake, I believe, asked him why he was not in the pilot-house, and he began some reason that he was outside to look, or something of that sort—I don't recollect positively.

129 Q. That was the conversation in reference to the collision?

A. Yes, sir.

Q. (By Mr. Donohue.) Did Mr. Lake deny that the pilot of the tug had whistled at all?

A. I understood him so to do; he put his question in that form why he did not answer his signals.

Q. (By Mr. Beebe.) Did you make any memorandum of that transaction?

A. No, sir.

Q. (By Mr. Donohue.) Do you know who gave Mr. Jones the information on which this answer was drawn?

A. I think I gave him the result of my examinations, I am not positive, and sent the men to him; I could not say. I cannot be positive about it, but think I did so.

Q. But in order to get the answer you took the precaution of getting the statements of your witnesses, and sent them to Mr. Jones?

A. I inquired of Mr. Lake, and I don't know whether I have ever had any conversation with the wheelsman or not, but I know I did with Mr. Lake.

HULET LAKE recalled.

Examined by Mr Jones:

Q. You have testified about starboarding the helm about the time you passed Magazine Point?

A. Well, we always do starboard our helm when we pass Magazine Point—that is, going around the point; but when you get straightened down, you let your wheel amidships to keep your boat steady.

130 Q. When you stated you didn't change your wheel, you meant you didn't port it after that?

A. I didn't port it any more than to keep the boat steady. In turning West Point you have got to swing to the westward.

Q. (By Mr. Donohue:) You have stated on your direct examination what you did?

A. Yes, sir.

(Testimony closed.)

Adjourned.

(Endorsed:) Hasbrouck vs. St. John; 2d day's test'y.

131 At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on Saturday, the seventh day of March, in the year of our Lord one thousand eight hundred and sixty-eight:

Present, the Honorable Samuel Blatchford, district judge.

ABRAHAM E. HASBROUCK
vs.
THE STEAMBOAT "ST. JOHN," HER ENGINE, &C.

This case having been heard on the pleadings and proofs, and argued and submitted by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the court that the libellant recover in this action against the steamboat St. John, her tackle, &c., the damages caused by the collision referred to in the pleadings in this action, and that the above-named steamboat, her tackle, &c., be condemned therefor. And it is further ordered that it be referred to one of the commissioners of this court to ascertain the said damages, and report the same to this court with all convenient speed.

SAM'L BLATCHFORD.

132 Indorsed: Vol. 18, No. 526. United States district court for the southern district of New York. Abraham E. Hasbrouck vs. The steamboat "St. John," &c. Beebe, Dean & Donohue, & C. Swan, proctors for libellant. Int'y decree & order ref'ce. Filed the seventh day of March, 1868.

133 *Testimony on reference.*

U. S. district court.

ABRAHAM E. HASBROUCK
vs.
THE STEAMBOAT "ST. JOHN," HER ENGINE, tackle, &c.

March 12th, 1868.—Pursuant to notice of reference, the proctors for respective parties present evidence for libellant.

JACOB FOX (sworn) says:

I reside in South Rondout, Ulster County, N. Y.; business ship-building. In the fall of 1864 I raised the barge "Ulster County," at West Point, where she was sunk by the collision. I floated her up on to my ways. I had her in a sling & floated her up to South Rondout & put her on my ways; I hauled her out & repaired her; I was from December 1st to the 1st of March repairing her. The amount of repairs put on her was $6,330 56. That bill was paid by Mr. Hasbrouck; put in evidence, marked Ex. "A," J. A. O.

Q. What proportion of these rendered necessary in consequence of the injury from the collision?

A. I kept the account of the damage, and it amounted to little over $3,100, not including the cost of raising. The cost of raising was a little over $300. I gave Hasbrouck the bill for raising her, & he p'd it;
134 put in evidence, (marked Ex. "B," J. A. O.) I could not tell when the season closed that year; she was not completed, joiner work & all, when she left my hands in the spring. She was cut open about 18 inches from her stem on the larboard side of her; cut in about 10 or 12 feet I should think; cut through two of her carlines; cut in

through the deck up to her deck-beam. I think the beam and the support aft of the beam prevented, I think, her being cut through.

Q. What was the effect of that blow & injury upon the vessel generally & by sinking?

(Obj. to.)

A. The boat was jarred from stem to stern; shattered her.

Q. Was she as valuable after the repairs had been made which related to the injury as she was before she was hurt at all?

(Obj. to.)

A. No, sir; I have been working at ship-building for about 23 or 24 years. I have built ships, vessels, or river crafts.

Q. From your knowledge of ship-building, how much was the value of that vessel diminished by her sinking & being injured beyond what the repairs made relating to these injuries?

(Objected to; taken subject to objection.)

A. About $1,200 to $1,500. I personally superintended the repairs. Patching the job up can't be made as good as she was before. The effect of such a blow would have a tendency to loosen all her spikes, trenails, and all her fastenings. The size of the carlines broken by this collision was 6 to 8.

135 X'd by Charles Jones, esq.:

Q. State what you did on the vessel by way of repairing the injuries she sustained by the collision.

A. I hauled her up & blocked her up; tore out all the timbers on the larboard bow, from her string down to her keel; put in 12 frames, including floors, and planked her up outside, & ceiled her up inside; put in new dead-wood forward & stern, knee and piece of keel & kelson; put in about 30 feet kelson; respiked her bottom, & refastened her kelson; that is all concerning the break forward. Her joiner-work was askewed; knocked one side her sail & stanchions. I could not tell how many stanchions I put in, & her rail was damaged and shattered all the way around on the larboard side. Her upper deck was cut in two places, & the stanchions supporting the upper deck were carried away—could not tell the number; the braces or arms that hold up the upper deck forward were three carried away; some 10 or 12 carlines of the upper deck broken; her forecastle was all carried away; her closets, berths, lockers were carried away.

Q. State the cost of the materials used in making the repairs mentioned in your last answer.

A. $1,500 00 or $1,600 00.

Q. Look at "Ex. A," now shown you, & state which of the items included in that embrace the materials used in making the repairs.

A. I can't answer right straight along; I can make a bill of the time, spikes, oakum, & material used. I will make & produce such a
136 bill & do it within half hour. I have known the "Ulster County" for 10 or 12 years. She was built at Rondout by Bridge & Bishop; I never repaired her before the time in question; I do not know how long before I repaired her she had been repaired in any respects. I should not think she was in need of repairs before this injury. If she had not been jarred up she would have run a couple of years without repairing. I neither bought or sold any vessel of that class during that winter; never bought or sold such vessels.

Q. What injury was done to the vessel that you did not repair?

A. There was joiner work to be done and stanchion to be put in.

Q. What was there for a ship-builder to do that you did not do when she left your hands?

A. There were a few stanchions we did not put in. I did not raise her by contract. The charge of $500 for raising her was based on the employment of 16 men to help me for 7 or 8 days; charged $80 per day for the men employed, including the chains, rigging, boats, etc. One of the boats was numbered 204 & the other 338; the boats belonged to me; were rigged up for that purpose. The bill has been paid. I have now a statement showing the items of materials & work of re-
137 pairs. I now present it; it is marked Ex. "A," 1, J. A. O. There were 315 to 325 days' labor, at $3¼ per day, except myself, & I charge $3 50 for myself per day. I have not the blacksmith's bill in items; Wm. Sheppard was the blacksmith, residing at Rondout. The payments were made at the time mentioned in Exhibit "A," partly in cash & partly in notes. I made the "Ulster County" tight; put as good timber in her as she had before.

Redirect:

In the effort to get the larboard anchor up, it caught in the cut forward, & we could not get it up, & I dove down & made it fast to the boat, & it was lost going up the river; did not see the other anchor.

JACOB FOX.

Subscribed & sworn to before me, March 12th, 1868.

JOHN A. OSBORN,
U. S. Comm'r.

WILLIAM MORROW (sworn) says:

I reside 42 Clarkson street, New York; my business is shipwright, caulker, & joiner. Have been such for 20 years. Have known the "Ulster County" for some years; did work on her in spring of 1865; did carpenter & joiner work to the amount of $750 00. A collision rendered that work necessary.

Q. Can you tell how much the "Ulster County" was generally
138 deteriorate in consequence of the injury she had sustained; if so, what was the amount?

(Obj. to.)

A. Depreciated in value ⅓d; the reputation of a boat after she has been run into & sunk is bad; consequently she depreciates.

Q. Is it possible to remedy all the injuries a boat receives by such a collision?

A. No, sir. I put on stanchions & rails up & down the fenders, chocks, & cleets, bulkhead across deck, kitchen complete, combings on deck, carlines, berths, put in a windlass—that is about all; I did work on her extending along 3 months. The vessel was not delayed by the work I did on her; when she came to New York I would work on her while here, and then wait till she came back again; generally work about 4 days in the week on her. The work that I did on her, if done at one time, with all the men that could work to advantage, would have taken one week.

(Obj. to.)

X'd by Mr. Jones:

I have not the bill of items with me; I rendered a bill of items for the work & materials; the book containing the items is now destroyed, I think; can't say now how many days' work, because I have had no time to look over the account; I can, by looking over the bill, give the

items & the materials. I commenced working on her first trip
139 down in spring of 1865. The work *work* that I did could have been done in the winter & as well as spring; I have known her for 15 years.

Q. What was her value in the fall before the collision?

A. If I had a trade for her, & wanted to by her, I would give $15,000 00. I did not buy or sell any vessels of the class of the "Ulster County" in the fall of 1864 or spring of 1865. I never bought & sold vessels of that class. I never built any vessel of this class. I always repair vessels. I am in business on my own account. My business is now in Jay street.

Re-direct:

Bill now shown me is one of my bills, amounting to $315 66, put in evidence, marked (Ex. "C," J. A. O.,) another bill marked (Ex. D. J. A. O.) is one of my bills, $38 32; and there was another between these two, which I rendered to Hasbrouck. I have acted for other parties in procuring vessels for them. A vessel after being sunk & injured, as was this vessel, requires painting. I had nothing to do with the painting.

Re-cross:

I have bought schooners for captains; I bought the barge Canaan for Capt. Lefevre two years ago, a small barge ½d size of the "Ulster County;" I can't recollect the names of any others. The work embraced in E. "D." J. A. O. was done in July, 1865; the work on the upper deck.

WILLIAM MORROW.

140 Subscribed & sworn to before me, March 12th, 1868.

JOHN A. OSBORN,
U. S. Comm'r.

ABRAHAM E. HASBROUCK (sworn) says:

In 1864 I was the owner of the barge Ulster County; she ran between New Pultz Landing & New York City. I had been interested in vessels on the river. The busiest season for barges is in the fall & latter end of the season. This collision took place on the morning of the 20th of November, 1864; she did not run again at all that season; navigation was suspended on or near the 25th of December of that year. There was not time enough to repair her before the close of the season; she was towed up to Rondout from West Point by the propeller Pluto. The charge for that towage was $175 00. That was a fair charge at that time, & the condition she was in. Her condition before the collision was considered good; she had cargo on board at the time of the collision; it was goods and merchandise, general merchandise. I expended money in looking & taking care of merchandise after the collision. The amount was $105 00. This was a ferry-boat from Poughkeepsie to go down, take off the cargo, & take it to New Pultz, what cargo could be found.

(Obj. to.)

141 Q. What would be a fair & reasonable demurrage per day for that barge, for the balance of that season?

(Obj. to.)

A. $50 00 per day. Some of the cargo was damaged by the collision & sinking; I have the particulars & extent.

Q. Please state the particulars.

(Obj. to.)

A. I have several bills which I now produce. One of Elting & Deyo, amount $256 25, marked (Ex. "E," J. A. O.,) which was paid by me; bill of Nathan Williams, $88 65, paid by me, (Ex. "F," J. A. O.;) bill of A. W. Adams, $38 73, paid by me, marked (Ex. "G," J. A. O.;) bill of J. M. & J. J. Hasbrouck, $79 90, paid, marked (Ex. "H," J. A. O.;) bill of Silas Lefevere, $300 00, marked (E. "I," J. A. O.;) bill of Morganna Craft, $78 50, paid, marked (Ex. "J," J. A. O.;) bill of M. G. Traphagan, $12 63, marked (Ex. "K," J. A. O.;) bill of C. B. Hasbrouck, $347 50, (Ex. "L," J. A. O.;) bill of Mrs. Sprague, $30 50, (Ex. "M," J. A. O.) These several bills were paid by me.

Q. What did you do in ascertaining whether those bills were correct or not; whether any of the goods were damaged?

(Obj. to.)

142 A. I examined all the goods myself; most of the merchants were neighbors of mine; that barge was under water just one week before she was raised. In the course of another week the water was got out of her; she was furnished to carry passengers as well as freight; she had ladies' and gentlemen's cabins and state-rooms. The furniture on board of the boat was worth $1,000 00; that furniture was injured; the bedding was all damaged. I went over the furniture at the time to see what damage it sustained. It was damaged fully $500 00, half its value. I had two anchors & chains; one was lost at the time of the collision & the other on the barge's passage up to Rondout; the wreckers could not haul up this anchor, & it got under the fore part of the barge, and, on the way up the river, she lost it. There were no means of getting it up. The one lost at the time was valued at $200 00. The one lost going up the river, $300 00.

(Obj. to.)

We lost the breast-line forward the tow-chain; spring-line aft, & breast-line aft; we had a set of lines we used in fastening the barge to the dock. All the lines I value them at $500 00.

Q. Was the value of that barge deteriorated by reason of that collision and sinking, beyond the repairs made for those reasons?

(Obj. to; not competent.)

A. I think she was.

Q. To what extent?

(Obj. to.)

A. I should think $3,000 00.

143 Q. How much was she worth before the collision?

(Obj. to.)

A. $14,000 00. That was a fair value at the way barges were selling. The tonnage was 250 odd tons. I laid out on her somewhere near $7,000 00, after the collision, including the repairs, &c.

Q. How much was she worth after expending the $7,000 00?

A. She was worth no more than before the collision. The collision damaged her generally; the water ran out of her seams; her upper works were all out of shape & strained. I have no personal interest in her now; at the time I swore to the libel, there had been no repairs made on the vessel; she had just been raised.

X'd by Mr. Jones:

I don't pretend to be an expert in the weight of anchors, but I should think the small one would weigh 300 & the large one 500 pounds; could not find where the small anchor was, and no effort was made to get it up. The bills of merchandize I paid. I will give a statement when I paid them. In the fall of 1864 I did have a barge, the "Erastus Corn-

ing," directly after this collision, for the balance of the season; hired it of Edward E. Sherman, of East Baltimore. I hired no other or let none.
She had been carrying hay before I hired her. I paid $1,000 for
144 her for the balance of the season. The "Ulster County" was
thoroughly repaired—made tight and staunch. She is lying at the foot of Franklin street, New York City. I bought an interest in her 7 or 8 years before the accident, & at the time of the accident I owned her entirely. Bought her of Lefevre Brothers, New Pultz Landing. Vessels of this kind generally required to be repaired at the close of the season. Ordinary repairs was not over $100 00 that year, if the collision had not occurred. I have not been engaged in buying & selling barges of the class of the "Ulster County," except her. Never built any vessel. I used to clerk on the barge before I bought an interest in her.

ABRAHAM E. HASBROUCK.

Subscribed & sworn to before me this 12th day of March, 1868.
JOHN A. OSBORN,
U. S. Comm'r.

MARCH 13, 1868. Parties present.

Evidence for libellant.

JACOB MYERS (sworn) says:

I live in Jersey City. My business is hay-dealer and chartering barges & steamboats. Have been chartering boats, &c., for about 6 years; familiar with the boating on the river. The fall of the year is
the busiest time. I recollect the fall of 1864, Nov'r & Dec'r. That
145 year in the fall was busier than usual; more boats in demand
than before or since. I know the barge "Ulster County."

Q. What would be a fair price per day for the use of a barge like "Ulster County," from the middle of November till the close of navigation?

(Obj. to.)

A. $50 00 per day would be a fair price.

X'd by Mr. Jones:

I have been engaged in chartering boats, & hay-dealer, since 1861; place of business is at the foot of Morton street, N. Y. In the fall of 1864 I chartered the "Walter Sands," a barge running between New York & Albany; chartered her to a man by the name of Van Duzen; the boat belonged to us. Chartered the barge "William J. Haskett;" the firm of Whitbeck & Co., Castleton, chartered her of us for the latter part of the season; I am not positive it was the "W'm J. Haskett" or "W'm H. Morton;" both were chartered, however; got $1,000 per month for the Walter Sands. The others were chartered for the season. I know what we got for the Hasket for the summer & part of the fall; $50 per day of the Government; when she was running for the Government she was not running on the North River; I can't tell what we got for her without looking at my books; while she was running on the river in the fall, can't tell within $10 00 or $15 00. Our barges were not
fitted up for passengers like the "Ulster County," but about the
146 size of her, however. I made no other charter, & don't know of any
other. The business in the spring is sometimes as large as in the fall, but not generally; but not that year. The reason for the business of that fall was the Government requiring a great deal of hay. When we

make a charter for the season we always consider the latter part of the season the best, & I base my value of demurrage for a boat on what I chartered our own vessel for, & from what I know of the business.

Re-direct:

I made myself acquainted with the prices that other vessels were bringing that fall; know the barge "Erastus Corning;" she was not fitted up for passengers, & very poorly for freight. I should consider the "Ulster County" the better adapted for the business of freighting general merchandize than the "Erastus Corning."

Re-cross:

Q. Name the barges which were chartered in November & December, 1864, in addition to those you have specified.
A. I don't know that I recollect distinctly now.
Q. Can you name one?
A. I recollect the Corning being chartered.
Q. Any other?
A. I think the barge "Erie."
Q. By whom & to whom?
No answer.
Q. Any other?
A. I can't say for certain any other.
147 Q. By whom & to whom was the Erie chartered?
A. Can't recollect distinctly, nor the price. The Corning was chartered by Sherman to the "Ulster County" people, Hasbrouck.

J. MYERS.

Subscribed & sworn to before me this 13th day of March, A. D. 1868.

JOHN A. OSBORN,
U. S. Comm'r.

SIDNEY BRETT (sworn) says:

I was the clerk on the "Ulster County" at the time of the collision. (Exhibits H, I, J, K, L; J, A, O, shown witness.) The bill of Traphagan, Ex. "K," represents some property, but what the goods were, I don't know. I have seen all the bills before. I know that C. B. Hasbrouck, Ex. L, had property on board, because I tallied it when it came on board, & know that some of it was damaged. I know that Silas Lefevre had several loads of furniture on the vessel on the main deck of the barge, & when she sunk some of it floated away, & the balance was damaged. I know that Elting & Devoe, Ex. "E," had merchandize on board, but the amount & the amount of damage I don't know; know that some of it was damaged; I know that Nathan Williams, "Ex. F," had flour on board, & know that it was damaged. I don't know anything positive about A. M. Adams, Ex. "G." I know that Mrs. Sprague was on board, but can't swear as to what property she had on board; the furniture on board, including the bedding,
148 &c., was worth $1,000 00. I have never been in the business, but that is what I should judge its value; it was damaged fully ½; we rescued as much of the property as was possible; the ferry-boat "J. C. Doughty" came down, & took up everything we had rescued. Five men remained there. Samson post was damaged, so that the windlass was entirely useless; one anchor entirely gone, & the other overboard. The collision cut one of the chains of the anchor, & it was thrown overboard, & the other was overboard, but the chain was not broken.

She was 14 feet under water on her main deck. Pluto took us up; the ropes, lines, &c., were all lost.

X'd by Mr. Jones:

When we received goods on the barge we tallied them in the book, and sometimes did not take any account till we got to the store-house. There was a book to show of the account of this cargo. I can't recollect the exact number or amount of goods mentioned in the exhibits. I did not make estimate at the time. I was not present when account of the furniture was taken of what was lost or saved. I did not at the time make any estimate of the damage at the time.

SYDNEY BRETT.

Subscribed & sworn to before me this 13th day of March, A. D. 1868.

JOHN A. OSBORN,
U. S. Comm'r.

149 MARCH 25TH, 1868. Parties present.

CHARLES B. HASBROUCK (sworn) says:

In 1864 I was merchant in New Paltz, Ulster County. I had goods on barge "Ulster County" when she sunk; they were injured. The general character of the goods on board were sugar, molasses, & tea; there were other goods, I think; the sugars were lost to me entirely; the libellant paid me for the loss of the sugars & damages to other goods. He paid me about a month after the accident. I think I made out a statement at the time I found out the losses; the loss of the sugars was entire. I only collected for the loss of the sugars.

Q. What was the amount of your loss, can you state?

A. I can't give the exact amount without referring to my bills of that date; about the amount of that bill Exhibit "L."

(Obj. to.)

Q. Was or not the damage and loss of the goods as much as the money paid you by Mr. Hasbrouck?

(Obj. to.)

A. He paid me my losses, & no more; he paid me the net cost of the goods.

X'd by Mr. Jones:

I reside in New York; boot & shoe business; at the time of the payment of this claim I kept a country store. I could not answer how many barrels of sugar I had on board. I think it was purchased
150 of C. Burkhalter & Co., New York. I first saw Ex. "L" yesterday here in the commissioner's office. I don't know, neither have I been informed, who wrote the Exhibit "L." I furnished a statement to the libellant of the loss & damage I sustained. The money paid was paid on the statement made to him. The sugars were refined light sugars; different grades.

Q. You cannot, then, state the number of lbs. or the price of the sugars?

A. No, sir; the libellant is a nephew of mine.

Re-direct:

My books & papers are in Ulster Co., I think. I have been in New York two years. The bills & papers I laid away that fall, & have not seen them since.

Re-cross.:

I saw the books last fall.

CHARLES B. HASBROUCK.

Subscribed & sworn to before me this 25th day of March, A. D. 1868.

JOHN A. OSBORN,
U. S. Comm'r.

Adjourned to March 31st, 1868, at 12 o'clock noon.

MARCH 31ST, 1868. Proctor for libellant present; and calls—

NATHAN WILLIAMS, sworn:

151 In 1864 I resided in New Pultz, Ulster Co. I was in the mercantile business. I had goods on the "Ulster County" when she sank. (Ex. "F" shown witness.) I had on board all the articles mentioned in the Ex. "F." The damage & loss mentioned there, $88 65, has been paid to me by the libellant, and about the time of the date of the bill.

X'd by comm.:

I know that these articles were on board the "Ulster County," from the parties of whom I bought. The flour I received in a damaged condition. The Ex. "F," made out in my handwriting about the time it was paid. I bought the fish of Mattlige & Bunnan, of West street; as to the flour I am not positive whether of John Romer in West st., between Warren & Murray, I think, or Baker & Nichols. I have not the bills here. They are at my place of business—at my residence, Kingston, Ulster Co. I sold the flour at retail to consumers; the flour was all delivered to me, (20 bbls.) The difference between what I realized on the sale of the flour & the cost price was the basis of damages mentioned in the bill. I could not say to the day the bill was paid. I had accounts running between libellant & myself, as to the barge; I can't say when those accounts were closed—soon after the close of navigation that year. I got the flour two or three days after the collision, & retailed it in about a week.

NATHAN WILLIAMS.

Subscribed & sworn to before me this 31st day of March, A. D. 1868.

JOHN A. OSBORN,
U. S. Comm'r.

152 JACOB M. HASBROUCK (sworn) says:

In 1864, I resided in New Pultz, Ulster County. I was of the firm of J. M. & J. J. Hasbrouck. I am not related to the libellant.

Q. Did you have goods on the "Ulster County?"

(Obj. to.)

A. I received goods in a damaged condition from her. (Ex. "H," J. A. O., shown witness.) This is in my own handwriting; the articles mentioned in the Ex. "H," some of them were lost & the rest damaged. The first item on the bill, $2 90, was neither lost or damaged, or is it claimed against the vessel. I received bills of the other goods mentioned in that Ex. from the "Ulster County." The damaged tea we sold at a discount of 40 cts. per lb., & the damaged flour was sold, & the difference from what we got & the cost price was the basis.

Ex'd:

The libellant and I settled this on the freight bill, about Jan'y, 1865

The flour was purchased of J. Romer & Co. The tea was purchased of different houses.

JACOB M. HASBROUCK.

Subscribed & sworn to before me this 31st day of March, A. D. 1868.
JOHN A. OSBORN,
U. S. Comm'r.

SILAS LEFEVRE (sworn) says:

I was on board "Ulster County" when she sunk; my wife & two children were also on board, & all my furniture; consid-
153 erable of the furniture was lost, & what was not lost was injured; we had beds, bedding, bureaus, book-cases, libraries; can't tell now exactly what they were, so long ago; had chairs, carpets, music-book, sheet music, guitar. I had been keeping house prior to this time. I had kitchen furniture. I had on board all the articles we had been keeping house with.

Q. Did you have a settlement with Mr. Hasbrouck by way of losses?
(Obj. to.)

A. Yes, sir. There was a bill made out at that time, a bill of items; I don't know what has become of it, whether it was lost or not.

Q. Do you recollect the amount of it?
(Obj. to; taken subject to objection.)

A. I do; $300, to the best of my recollection, when I made the mem. of the amount on that bill of items.

Q. Was that the fair amount of your loss & damages on that furniture?
(Obj. to, & sustained.)

Q. State what articles you remember to have been lost?

A. I can't tell what was lost; I know that my whole library was lost; but what books were in it I can't tell.

Q. Can you tell of any articles of furniture that were absolutely lost?

A. I can't think of any now. I know there were some entirely lost.

Q. Refer to the articles that were damaged, & state as near as you can what were damaged and to what extent?

154 A. A bureau damaged, I forget how much it was; to the best of my recollection, $5 00; a guitar, $15 00; it is apart & cracked, & have never used it since. The damage to the book-case was about $3 00. Had four feather beds, (geese feathers;) how much damaged I can't recollect; blankets, counterpanes, sheets, were all wet, but what damage to them I can't say now; some of the clothing, wife's dresses entirely ruined; one silk dress entirely ruined; children's clothing, some of it lost & some damaged; can't specify; this is all I can recollect now. I recollect of Mr. A. W. Adams being on board, but don't know where he is now. All I recollect of the property he had on board a barrel of flour, & he was trying to get a barrel of flour out, but it was S. D. Bond's flour. I don't recollect of Mrs. Sprague.

Ex'd:

I don't know of my own knowledge that Adams had a barrel of flour on board.

SILAS LEFEVRE.

Subscribed & sworn to before me this 31st day of March, 1868.
JOHN A. OSBORN,
U. S. Comm'r.

MORGANNA CRAFT (sworn) says:

She resides in the town of Lloyd, Ulster County. My husband is Philip R. Craft, farmer. I was on board the barge "Ulster County" when she was sank, and had on board all the articles enumerated on bill Ex. "J." The articles mentioned in this Ex. were entirely lost.

155 The articles mentioned on this Exh. were entirely lost.

Q. Were they worth the sums annexed to the articles on the bill? (Obj to.) I was a widow at that time. I had $40 00 in one bundle that I purchased of Lord & Taylor that day, clothing, a new black alpaca I had purchased and had made; it cost me $18 00. I had white flannel skirt, cost me $11 00, and a new balmoral skirt, cost me $5 00. I had a pair of morocco boots, made to order, $4 00, and underclothing, $2 00, a muff, $10 00 I valued, black, $2 00. None of the above-enumerated articles were in the bundle. The black crape collar, $1 50, in the bundle; also a black breastpin, $2 00; ¾ lbs. worsted, $2 25; two white skirts, $7 00; one black shawl, $11 00; five y'ds linen, at 9 shillings per yard, $5 62½; 1 dozen handkerchiefs, 50 c. apiece, $6 00. I think there was something else in the bundle. At all events what was in it cost me $40 00 at Lord & Taylor's.

Cross-'x'd:

I think I wrote Ex. J. about 6 weeks ago. I delivered it to Silas Saxton; he lives at Highland, Ulster Co. I made it out to get my due for what I lost on the "Ulster County." I have not been paid for any of my loss.

Re-direct:

I made out a bill in two weeks after the accident, & handed it to Mr. Hasbrouck, the libellant. This bill, Ex. "J," is made from

156 memory, knowing what I had and lost.

Q. This Ex. "J" is all that you claim for loss on the "Ulster County," is it not?

(Obj. to, on the ground that she has already answered that before.)

A. No, sir, there is more which I put on the bill. I claim all that I lost.

Q. Is your memory in reference to the loss which you claim better to-day than it was 6 or 8 weeks ago when you made that bill?

A. I think it is, as I have remembered things to-day that I had not put on the bill.

Q. What facts or circumstances have refreshed your memory to-day as to the bills?

A. Thinking over the articles I had in the bill, 9 yards of linen came in my mind, & also the linen handkerchiefs. There were other articles in the bundle which I can't now remember.

Re-direct:

I recollect of a lady by the name of Mrs. Sprague, but don't know of anything she had on board.

MORGANNA CRAFT.

Subscribed and sworn to before me this 31st day of March, A. D. 1868.

JOHN A. OSBORN,
U. S. Comm'r.

Libellant rests, and the reference is adjourned to Monday, April 6th, at 2 p. m.

(Endorsed:) U. S. dist. court, so. dist. N. Y., Abraham E. Hasbrouck vs. the st'boat St. John, her tackle, &c. Testimony on reference.

157 BARGE "ULSTER COUNTY" & OWNERS,

To JACOB FOX, DR.

To hauling out 258 tons,	*a*	20c		51	60
" 243¾ days' labor,	*a*	26*s*		792	19
" 601 " "	*a*	22*s*		1,652	75
" 30 " "	*a*	20*s*		75	
" 131½ " "	*a*	16*s*		263	
" 28 " "	*a*	12*s*		42	
" 13,691 ft. chestnut,	*a*	6c		821	46
" 14,172 " oak plank,	*a*	8c		1,133	76
" 2,909 " kelsons,	*a*	9c		261	81
" 48 " spruce plank,	*a*	6c		2	88
" ⅜-inch knees,	*a*	$6		12	
" 1/10-inch "	*a*	7		7	
" ⅐-inch "	*a*	5		5	
" 2,813 ft. pine,	*a*	7c		196	91
" 1,062 " "	*a*	6c		63	72
" 152 " "	*a*	6½c		9	88
" 1,705 lbs. spikes,	*a*	12c		204	60
" 2 " clout nails,	*a*	20c			40
" 102 " nails,	*a*	12c		12	24
" 18½ washers,	*a*	24c		4	42
" 15 lbs. iron wedges,	*a*	22c		3	30
" 345 " oakum,	*a*	18c		62	10
" 2½ " cotton,	*a*	34c			85
" 2¼ bbls. pitch,	*a*	$5		11	25
" 75 lbs. white lead,	*a*	18c		13	50
" 3¼ gall. boiled oil,	*a*	1 80c		5	85
" lampblack					25
" washing window curtains, &c				50	00
blacksmith's bill				366	65
158 2 mops,		75c		$1	50
interest on note, 3 months,		$1,500		28	
" " " " " "		$10,80		32	55
" " " " " "		$10,00		18	
" Government tax				124	12
				$6,330	56

Amt. found, $6,330 56.

CR.

Jan. 6, by note for 3 months		1,500 00	
Feb. 11, " " " " "		1,800 00	
March 20, " " " " "		1,000 00	
			4,300 00
			$2,030 56

[2c. int. rev. stamp, cancelled.]

South Rondout, March 28th, 1865.

Received payment in full.

JACOB FOX.

Endorsed: Jacob Fox, ship carpenter, $6,330 56; paid March 28th, 1865.
Ex. "A." J. A. O.

159 BARGE "ULSTER COUNTY,"
To JACOB FOX, DR.

Damage bill by steamer St. John:

To hauling out 258 tons,	*a*	20c		$51 60
1,060 lbs spikes,	*a*	12c		127 20
1,062 ft. pine,	*a*	6c		63 72
9,800 " chestnut,	*a*	6c		591 60
7,006 " oak plank	*a*	8c		560 48
48 " spruce plank,	*a*	6c		2 88
2,206 " kelsons,	*a*	9c		198 54
15 lbs. iron wedges,	*a*	22c		3 30
345 " oakum,	*a*	18c		62 10
2½ " cotton,	*a*	34c		85
1½ bbl. pitch,	*a*	$5 00		7 50
75 lbs. white lead,	*a*	18c		13 50
3¼ gallons boiled oil,	*a*	1 80		5 85
watching window curtain, &c				50 00
1 map				75
labor on within work				1,068 50
blacksmith's bill				366 65
2x8-inch knees,	*a*			12 00
1x10 " "	*a*			5 00
				3,192 02

Ex. "A" 1, J. A. O.

160

161 $500. RONDOUT, N. Y., *Dec.* 3, 1864.

One month from date I promise to pay Jacob Fox, or order, five hundred dollars, at the First National Bank of Rondout, for value received.

AB'M E. HASBROUCK.

[Stamp: 25c. cancelled.]
Jan. 31.
Endorsed: Jacob Fox.

$500 00.

Received, South Rondout, December 3d, 1864, Abraham E. Hasbrouck, esq., his note, payable at the First National Bank of Rondout, one month after date, for the sum of five hundred dollars, which is in full for raising the barge Ulster County.

JACOB FOX,
per J. WAM.

Endorsed: Fox bill & receipt for raising barge, $500. No. 1, paid Dec. 3d, 1864.
Ex. "B.," J. A. O.

162 NEW YORK, *April* 29, 1865.

BARGE ULSTER COUNTY,

TO WILLIAM MORROW, DR.

To 38 days' carpenter work on barge,	$4 50		171 00
60 lunged and grooved boards,	35c		21 00
14 boards,	45c		6 30
475 ft. oak, at	8		38 00
687 " pine, "	6		41 22
6 scanlting for cabin,	25		1 50
68 lbs. cut nails,	12		8 16
35 " sp'k's,	12		4 20
7 cartiges,	75		5 25
Roller for sliding door			25
April 16, $\frac{5}{8}$ day's work,	4 00		2 50
50 feet moulding,	6c		9 00
" 27, $\frac{1}{2}$ day work			2 00
" 29, 16 ft. oak,	8		1 28
1 day's work			4 00
			315 66
Received by cash			175 00
Balance			140 66
By cash			100 00
Balance			40 66

Rec. payment,

WILLIAM MORROW.

Endorsed: No. 6. William Morrow, carpenter work, $315 66, April 29, 1865.
Ex. "C.," J. A. O.

163 NEW YORK, *July 29th*, 1865.

BARGE ULSTER CO.,

TO WILLIAM MORROW, DR.

To 6 days' carpenter work, *a* $4 00		$24 00
" 60 ft. oak,	8c	4 80
" 64 " pine,	6c	3 84
" 58 " moulding,	6c	3 48
" 12 lbs. cut nails,	10c	1 20
" carting,	1 00	1 00
		$38 32

Rec. payment,

WILLIAM MORROW.

Endorsed: No. 7. William Morrow, carpenter work, $38 32, July 25, 1855.
(Ex. "D," J. A. O.)

NEW PULTZ, *Nov.* 19, 1865.

BARGE ULSTER COUNTY,

To ELTING & DEYO, DR.

Damage on & loss of goods by sinking of the Ulster County, $256 25
Received payment,

ELTING & DEYO.

[2 c. int. rev. stamp, cancelled.]
Endorsed: Elting & Deyo.
Ex. "E," J. A. O.

164 . NEW PULTZ LANDING, *Dec.* 26, 1864.

BARGE ULSTER CO.,

1864. To NATHAN WILLIAMS, DR.

Nov. 22, To damage on 20 bbls. flour, (wet)			$57 00
" " " " " 1 "	mackeral, (lost)		14 75
" " " " " 2½ "	" *a* $8 45		16 90
			$88 65

Endorsed: No. 1. Nathan Williams, Ex. "F," J. A. O., Barge Ulster Co.; bill damages.

HIGHLAND, *March* 9, 1865.

AB'M E. HASBROUCK,

To A. W. ADAMS, DR.

To goods lost on board Barge Ulster County, Nov. 19, 1864:

25 yds. muslin, 62½	15 68
10 " calico, 43c	4 30
2 prs. pants, *a* 3	6 00
1 bbl. flour	12 75
	$38 73

Endorsed: No. 4. A. W. Adams, (Ex. "G," J. A. O.)

165 NEW PULTZ, *January* 18, 1865.

Mr. A. E. HASBROUCK
To J. M. & J. J. HASBROUCK:

Sept. 9, 1864:

To 10 lbs. sugar taken from bbl. in the store-house, 29c	$2 90

Damages sustained by water in sinking of barge Ulster Co.:

1 chest tea, 67 lbs., as bill; 25 lbs damaged, 40c per lb	$10 00
1 keg saltpetre, total loss	25 00
8 bbls. flour, sold $4 less first cost	32 00
1 " " lost	12 00
	$79 90

New Pultz, January 1865.
Rec'd payment,

J. M. &. J. J. HASBROUCK.

(Endorsed:) Ex. "H," J. A. O. J. M. & J. J. Hasbrouck.

Mr. A. E. HASBROUCK

To SILAS LEFEVRE, Dr.

To loss & damage to furniture, caused by the sinking of barge Ulster County, on the night of Nov. 19, 1864..... $300 00

Rec'd pay't—

SILAS LEFEVRE.

Silas Lefevre, $300.
(Endorsed:) No. 8. Ex. "J," J. A. O.

166 Morganna Craft lost on board of the Ulster County the time she was wrecked—

One black alpaca dress	18 00
One white flannel skirt	11 00
One balmoral skirt	5 00
One muff	10 00
One p'r morocco gaitors	3 50
One p'r drawers	2 00
One p'r kid gloves	2 00
One black crape collar	1 50
One black breast-pin	2 00
¾ pound of worsted	2 25
2 white shirts	7 00
1 black shawl	11 00
1 satchel	2 25
1 brush & comb	1 00
	$78 50
	13 50
	$92 00

(Endorsed:) No. 9. Ex. "J," J. A. O.

NEW YORK, *Nov.* 19, 1864.

Mrs. M. G. TRAPHAGAN
Bought of B. F. BEEKMAN, 377 Broadway:

3½ D. bonnet frames, 3 25	11 38
1 y'd bombazine, 2 25	2 25
½ " cherry velvet, 4 50	2 25
	15 88
Paid	3 25
	$12 63

(Duplicate.)
Shipped by barge Ulster County.
(Endorsed:) Traphagan bill, No. 2. Ex. "K," J. A. O.

167 NEW PULTZ, *Nov.* 19, 1865.

BARGE ULSTER COUNTY
To C. B. HASBROUCK:

Goods and mdse lost and damaged on barge "Ulster County," amounting to $347 50

Rec'd payment,

C. B. HASBROUCK.

[U. S. 2c. int. rev. stamp cancelled.]

(Endorsed:) No. 5., C. B. Hasbrouck. Ex. "L," J. A. O.

Mrs. Sprague. List of articles lost with the barge Ulster County:

8 yds. merino	$10 00
10 yds. calico	3 00
2 photographs	10 00
6 yds. muslines	3 00
1 pocket-book	50
1 knife	50
1 brush	50
2 feathers	2 00
2 cords and tassels	1 00
Total	$30 50

168 (Endorsed:) No. 7. Ex. "M," J. A. O.

169 *Commissioner's report.*

District court of the United States for the southern district of New York.

ABRAHAM E. HASBROUCK, LIBELLANT
vs.
THE STEAMER "ST. JOHN," HER TACKLE, &C., respondent.

In pursuance of a decretal order made in the above-entitled cause, on the 27th day of July, A. D. 1867, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellant for damages sustained by reason of the collision in the pleadings mentioned, and to report thereon to this court with all convenient speed, I, John A. Osborn, the commissioner to whom the matter was referred, do report that I have been attended by the proctors for the libellant and for the claimants, and have taken and examined the testimony offered in support of the libellant's claim for damages, and do find that there is due to the libellant for damages the following items:

1. For repairs after collision	$3,192 00
2. Cost of raising the "Ulster County"	500 00
3. Permanent loss of value or deterioration	1,200 00
4. Carpenter & joiner work	750 00
5. Towage	175 00
6. Expense taking care of cargo, &c	105 00
7. Loss & damage to cargo, Ex. "E."	256 25

170	Loss & damage to cargo, Ex. "F."		88 65
	" " " " " Ex. "G."		38 73
	" " " " " Ex. "H."		79 90
	" " " " " Ex. "I."		300 00
	" " " " " Ex. "J."		92 00
	" " " " " Ex. "K."		12 63
	" " " " " Ex. "L."		347 50
	" " " " " Ex. "M."		30 50
	Damage to furniture		500 00
8.	Value of lost anchors		500 00
9.	Ropes, lines, &c		500 00
			8,668 16
10.	Demurrage, 20 days, *a* $50 per day		1,500 00
			$10,168 16
	Interest on same, less the items of demurrage and deterioration, from March 28, 1865, to April 14, 1868:		
	Demurrage	1,500 00	
	Deterioration	1,200 00	2,700 00
			$7,468 16
	Interest as aforesaid		1,587 67
			9,055 83
			$11,755 83

Making in all the sum total of damages, including interest, eleven thousand seven hundred and fifty-five $\frac{83}{100}$ dollars.

All which is respectfully submitted.

JOHN A. OSBORN,
U. S. Comm'r.

Dated April 14, 1868.

171 (Endorsed:) 18,526. United States district court southern district of New York. Abraham E. Hasbrouck, libellant, vs. The steamer "St. John," her engine, &c., respondent. Commissioner's report. Beebe & Donohue, proctors for libellant. Filed April 14th, 1868.

172

173 *Exceptions to commissioner's report.*

U. S. district court, southern district of New York.

ABRAHAM E. HASBROUCK
ag'st
THE STEAMBOAT "ST. JOHN," HER ENGINES, &C.

The claimants in this cause hereby except to the report of John A. Osborn, esq., commissioner of this court, made under an order of the 7th day of March, 1868, as follows, that is to say:

First. To his finding and report of the sum of twelve hundred dollars for permanent loss of value or deterioration of the "Ulster County."

1st. Because no such amount for such loss was proved, nor was such or any amount recoverable.

2nd. Because there was no proof of any amount for loss of value or deterioration of such vessel.

Second. To his finding and report of the sum of one hundred and five dollars for "expenses taking care of cargo."

1st. Because no sum whatever was recoverable by the libellant for such loss or damage.

2nd. That the proof was insufficient to establish a claim for the
174–5 amount so found and reported; and the claimants hereby excepts specifically to each item as found and reported, and to the sufficiency of the proof offered or made to establish the amount of each and every of the items as found and reported.

Fourth. To his finding and report of the sum of five hundred dollars "for value of lost anchors," and to his finding and report of the sum of five hundred dollars "for ropes, lines, &c.," and to each of such findings.

Fifth. To his finding and report of the sum of fifteen hundred dollars "for 30 days' demurrage, at fifty dollars per day."

1st. Because the libellant was not entitled to recover any sum for demurrage.

2nd. There was no proof of demurrage for the number of days as found and reported, nor of the value or sum per day as gone and reported.

Sixth. To the interest allowed.

1st. Because it is computed at the rate of seven per cent. instead of six per cent. per annum.

2nd. The time for which interest is allowed on the several items is not shown in the report of the commissioner.

176 Seventh. To each and every sum found and reported by him exceeding in amount the sums claimed in the libel filed in this cause, and to the total amount found by the commissioner in so far as it exceeds the amount claimed in the libel filed in this cause.

Eighth. The said claimants except to all of the evidence received by the commissioner to which said claimants objected on the reference, and hereby renews his objections specifically to such evidence, as inadmissible and improper evidence on said reference, and also specifically excepts to each and every item in regard to which such evidence was offered and admitted.

CHARLES JONES,
Proctor for Cl'm't.

(Endorsed:) 18,526, U. S. district court. Abraham E. Hasbrouck vs. the steamboat "St. John." Exceptions to commissioner's report. Charles Jones, proctor for cl'm't, 73 Broadway.

The within exceptions are disallowed. June 29, 1868. S. B.

Filed May 12, 1868.

177

178 U. S. district court.

ABRAHAM E. HASBROUCK
vs.
THE STEAMBOAT "ST. JOHN," HER TACKLE, &C.

SOUTHERN DISTRICT OF NEW YORK.

Welcome R. Beebe, of said district, being duly sworn, says that he is

one of the proctors for the libellant in the above-entitled action, and gave his personal attention to the preparation and the filing of the libel herein, which libel was filed on or about the 29th day of December, 1864. That at the time of filing the libel herein, the barge "Ulster County," which had been sunk by the steamer "St. John," had only recently been raised and had not been repaired, and the actual damage done to the said barge, to the cargo on board, and what damage the libellant had and would sustain, had not been ascertained, and almost all the items of damage contained in the libel were estimated and not certainly known. That since the filing of the said libel the said barge has been repaired, and the whole damage ascertained that process was issued and the steamboat actually taken in custody, and the claimants appeared and bonded the steamboat under and in pursuance of the provisions of the act of Congress in such case made and provided in the penal sum of fifteen
179 thousand and five hundred dollars. That the said action has since been tried, and a decree rendered therein in favor of the libellant, with a reference to a commissioner to ascertain & report the damages sustained by the libellant, and the said commissioner has proceeded with and concluded the said reference and made his report thereon. That it appears from the said report, and as the fact is, the libellant has sustained damages, by reason of the said collision, exceeding the amount claimed in the libel filed under the circumstances hereinbefore stated, and that it is necessary, in order that the libellant should have a decree for and collect the amount of damages that he has sustained, that his libel should be amended to correspond with the report so made. That said report was filed on Tuesday, the fourteenth instant, and has been confirmed nisi.

☞ See report of comm'r, folios —.

W. R. BEEBE.

Sworn to before me this 16th day of April, 1868.

A. W. HULL,
Notary Public.

180 U. S. district court.

ABRAHAM E. HASBROUCK
vs.
THE STEAMBOAT "ST. JOHN," HER ENGINE, tackle, &c.

On the foregoing affidavit and on all the pleadings and proceedings herein, let the respondents or their proctor shew cause before the honorable court on the 18th day of April, instant, at the opening of the court on that day, or as soon thereafter as counsel can be had at the court-room of said court, No. 41 Chambers street, in the city of New York, why the libellant should not be permitted to amend the libel in this action to correspond with the actual amount of damages sustained by him, or for such other and different order in the premises as to the court shall seem proper & just.

SAMUEL BLATCHFORD,
Judge.

Dated April 16, 1868.

(Indorsed:) U. S. district court. Abraham E. Hasbrouck vs. The steamboat St. John, her engine, tackle, &c. Aff'd'v't & order to show cause to amend libel as to amount of damages. Beebe, Dean & Dono-

hue, proctors. Adj'd to 25 April, at 11 a. m. Beebe, Dean & Donohue. Adj'd to May 2d, at 11 a. m. Beebe, Dean & Donohue, for l'b't. Charles Jones, esq., 111 Broadway.

182 At a term of the district court of the United States of America for the southern district of New York, held at the United States court rooms, in the city of New York, on Tuesday the fifth day of May, in the year of our Lord one thousand eight hundred and eight:

Present, the Honorable Samuel Blatchford, district judge.

ABRAHAM E. HASBROUCK
vs.
THE STEAMER "ST. JOHN," HER TACKLE, &C. } 18,526.

On reading and filing affidavit, and on the pleadings and proceedings herein, and on hearing Mr. Donohue, for the libellant, and Mr. Jones, for the claimant, it is ordered that the libel in this action be amended by inserting the amount paid for the repairs to the barge Ulster County, occasioned by the collision, to the sum of thirty-nine hundred & forty-two dollars, besides interest, "For damage sustained by loss of anchors, lines, ropes, &c., the sum of one thousand dollars & interest." "For loss & damage to cargo on board, the sum of twenty-eight hundred & forty-six $\frac{26}{100}$ dollars and interest." "For towage, the sum of one hundred & seventy-five dollars & interest. For expense in caring for cargo, the sum of one hundred & five dollars & interest." For permanent damage or deterioration, the sum of twelve hundred dollars.

SAM'L BLATCHFORD.

183 (Indorsed:) Vol. 18, No. 526. United States district court for the southern district of New York. Abraham E. Hasbrouck vs. the steamer "St. John," her tackle, &c. Order. Beebe, Dean & Donohue, proctors for lib'ts. Filed the sixth day of May, 1868.

184 District court of the United States for the southern district of New York.

ABRAHAM E. HASBROUCK, LIBELLANT,
vs.
THE ST'BOAT "ST. JOHN," THE NEW JERSEY Steamboat Company, claimants.

SIRS: Please to take notice that the claimants intend to appeal from the final decree of the court in this cause.

Dated August 15th, 1868.

Yours, &c.,

CHARLES JONES,
Proctor for Cl'm'ts.

To GEO. F. BETTS, Esq., *Clerk.*

BEEBE, DEAN & DONOHUE,
Proctors for Libellants.

(Endorsed:) 18, 526. District court of the United States, southern dist. of New York. Abraham E. Hasbrouck, lib'l't, vs. The steamboat "St. John," The New Jersey Steamboat Co. cl'm'ts. Notice of appeal. Charles Jones, proctor for cl'm'ts.

185 Due service of a copy of within notice is hereby admitted.

Dated Aug. 15, 1868.

BEEBE, DEAN & DONOHUE,
Proctors for Lib'l'ts.

Filed August 15th, 1868.

186 *Bond for cost and damages on appeal.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

ABRAHAM E. HASBROCK, LIBELLANT & APPELLEE,
vs.
THE STEAMBOAT "ST. JOHN," HER ENGINE, tackle, &c., The New Jersey Steamboat Company, claimants & appellants.

Know all men by these presents, that we, The New Jersey Steamboat Company and Daniel Drew and John Englis, are held and firmly bound unto the above-named libellant & appellees in the sum of twenty thousand dollars, to be paid to the said libellant, for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents. Sealed with our seals, and dated the twenty-fourth day of August, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas the above-named claimants have prosecuted an appeal to the circuit court of the United States for the southern district of New York, in the second circuit, to reverse the decree rendered in the above-entitled suit by the judge of the district court of the United States for the southern district of New York.

Now, therefore, the condition of this obligation is such, that if the above-named claimants shall prosecute their appeal to effect and answer all damages and costs, if they fail to make their appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE NEW JERSEY ST'B'T COMP'Y,
By D. DREW, *Pres'd't.* [L. S.]
D. DREW. [L. S.]
JOHN ENGLIS. [L. S.]

Sealed and delivered, and taken and acknowledged, this 24 day of August, 1868, before me,

GEORGE F. BETTS,
U. S. Com.

187 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Daniel Drew and John Englis being duly sworn, depose and say, and each for himself saith that he, Drew, resides in the southern district of New York, & he, Englis, resides at Ravenswood, Long Island, & that he is worth the sum of twenty thousand dollars, over and above all his just debts and liabilities.

D. DREW.
JOHN ENGLIS.

Sworn to this 24th day of August, A. D. 18 , before me,
GEO. F. BETTS,
U. S. Comm'r.

Approved:

BEEBE, DONOHUE & COOKE,
Proctors for Appellee.

(Indorsed:) In admiralty. Vol. 18, page 526. U. S. circuit court, south'n dist. of New York, 2d circuit. Abraham E. Hasbrouck, libellant & appellee, vs. The steamboat "St. John," her engine, tackle, &c., The New Jersey St'boat Comp'y, cl'ts, [appellants. Bond for costs and damages on appeal. Charles Jones, proctor, cl'ts & appellants. Filed this 24th day of August, 1868.

188 Circuit court of the United States for the southern district of New York, 2nd circuit.

THE STEAMBOAT "ST. JOHN," THE NEW JERSEY Steamboat Company, claimants and appellants,
Ads.
ABRAHAM E. HASBROUCK, LIBELLANT & APPELLEE.

To the honorable the circuit court of the United States for the southern district of New York, in the second circuit:

The petition and appeal of the above-named appellants respectfully showeth: That on or about the twenty-ninth day of December, in the year one thousand eight hundred and sixty-four, the above-named libellant, Abraham E. Hasbrouck, filed his libel in the district court of the United States for the southern district of New York, against the st'boat St. John, her engines, tackle, apparel, and furniture, and against all persons lawfully intervening for their interests therein, in a cause, civil and maritime, of damage from collision, in which said libel it is in substance alleged, among other things, that on the twentieth day of November, in the year 1864, the barge "Ulster County," of which said libellant was owner, came into collision with the said steamboat St.
John, and through the fault and negligence of the persons in
189 charge of the said steamboat, the said barge and her cargo were injured to the damage of seven thousand seven hundred and five dollars to the said libellant, and that in and by the said libel, the libellant prayed that the district court would be pleased to pronounce for the damage aforesaid, and to condemn the said steamboat, her engine, machinery, &c., with costs; that process was issued against the said steamboat, and she was attached, and on or about the 10th day of September, in the year 1865, The New Jersey Steamboat Company, the claimants, having filed the necessary stipulations for costs and value, filed their claim and answer in the said district court, alleging, among other things, in substance, that the said collision arose through the fault and negligence of the persons in charge of the said barge and the steam-tug having her in tow, and without any fault on the part of the said st'b't St. John, and praying that the said district court would be pleased to pronounce against the libel aforesaid, and to condemn the said libellant in costs; that thereafter the said cause came on to be tried and heard before the Honorable Samuel Blatchford, judge of the district court for the southern district of New York, on the 16th day of January, 1868, and the trial thereof was continued, and the cause was heard on the allegations and testimony, and proof adduced by the respective
parties on the 16th & on the 17th days of January, 1868, and there-
190 after on or about the 7th day of March, 1868, a decretal order was made by the said court by which in substance it was decreed that the libellant recover against the said steamboat, her tackle, &c., the damage sustained by him by reason of the collision aforesaid, and it was referred to a commissioner to ascertain and compute the amount

of such damages; that John A. Osborn, esquire, the commissioner, under and by virtue of the said decretal order, proceeded to take process in respect to the said damages, and on or about the fourteenth day of April, 1868, he reported in favor of the libellant for the sum of eleven thousand seven hundred and fifty dollars and eighty-three cents; and that his report was confirmed after hearing argument on exceptions to his said report, which were duly filed on the 11th day of May, 1868; and on or about the 29th day of June, 1868, a final decree was entered in the said cause in favor of the libellant for the amount so reported & costs; and these appellants are advised and insist that the said decrees are erroneous, inasmuch as the said libellant was not entitled to recover any damages in the premises, and that these appellants were entitled to a decree dismissing the said libel with costs.

And these appellants, for these and other reasons, appeal from the whole of the said decree to the next circuit court to be held in and for the said southern district of New York, and they pray that the
191 said decree, with the proceedings and documents in said cause, may be sent to the next circuit court, and on the said appeal they intend to have said cause heard anew on the pleadings and proofs in the district court, and other proofs to be introduced in the said circuit court.

And these appellants pray that the said decree, and every part thereof, may be reversed with costs, or that such other decree be thereupon made as to the said circuit court shall seem just, and that the said libellant be condemned to pay to these appellants their costs and damages in the premises.

CHARLES JONES,
Proctor for Cl'm'ts & App'l'ts.

(Endorsed:) 18, 526. U. S. circuit court. The steamboat St. John, The N. J. St'b't Co., cl'm'ts & appell'ts, ads. Abraham E. Hasbrouck. Appeal. Charles Jones, Proctor for cl'm't & app'l'ts. Due service of a copy of within appeal is hereby admitted. Dated Aug. 25th, 1868. B., D. & D. Filed Aug. 25th, 1868.

192 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Thursday, the 10th day of February, in the year of our Lord one thousand eight hundred and seventy:

Present, the Honorable L. B. Woodruff, circuit judge.

ABRAHAM E. HASBROUCK
vs.
ST'BOAT ST. JOHN, &C.

The appeal from the district court coming on to be heard,

Mr. W. R. Beebe reads from the apostles evidence on part of libellants and appellees.

Mr. Jones reads from the apostles evidence on part of claimant and appellant.

Mr. Jones argues the case on part of claimant & appellant.

193

194 At a stated term of the circuit court of the United States of

America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Friday, the 11th day of February, in the year of our Lord one thousand eight hundred and seventy:

Present, the Honorable L. B. Woodruff, circuit judge.

ABRAHAM E. HASBROUCK
vs.
ST'BOAT ST. JOHN, &C.

This case being still on hearing,
Mr. Charles Donohue argues on the part of the libellant and appellee.
Cur. adv. vult.

195

196 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on the 14th day of May, in the year of our Lord one thousand eight hundred and seventy:

Present, the Honorable L. B. Woodruff, circuit judge.

ABRAHAM E. HASBROUCK, APPELLEE,
vs.
THE STEAMBOAT ST. JOHN, &C., APPELLANT.

Dec'd

...ause coming on to be heard on the appeal herein, after hearing ... Jones, esq., for appellant, and Charles Donohue, esq., for ap... it is ordered, adjudged, and decreed that the judgment appealed ...erein be affirmed, deducting therefrom the sum of five hundred ... out of the item of $1,500 allowed for the demurage or detention ... barge, and that neither party recover costs of this appeal.

L. B. WOODRUFF,
Circuit Judge.

(Endorsed:) U. S. circuit court, S. D. of N. Y. Ab'm. E. Has
197 brouck, appellee, v. The steamboat "St. John," her tackle, &c. appellant. Decree. Filed May 14, 1870.

198 Circuit court of the United States for the southern district of New York.

ABRAHAM E. HASBROUCK, LIB'L'T & APPELLEE,
vs.
THE STEAMBOAT "ST. JOHN," HER TACKLE, &C.,
The New Jersey Steamboat Company, claimants & appellants.

The above-named claimants, The New Jersey Steam Navigation Company, hereby state to this honorable court that they appeal, and they hereby appeal, to the Supreme Court of the United States from the whole decree entered in the above-entitled cause, on the fourteenth day of May, 1870, with the clerk of this court; and the said appellant prays that the same may be sent to the Supreme Court of the United States.

CHARLES JONES,
Proctor for Claim't & Appellant.

N. Y., May 26, 1870.
To KENNETH G. WHITE, Esq., *Clerk.*

199 (Endorsed:) U. S. circuit court, south. dist. of New York. Abraham E. Hasbrouck, lib'l't & appellee, vs. The St'b't St. John, her tackle, &c., The New Jersey St'b't Company, cl'n'ts & app'l'ts. Notice of appeal. Charles Jones, proctor for cl'm'ts & app'l'nts. Due and timely service of a copy of within notice is hereby admitted. Dated May 26, 1870. Beebe, Donohue & Cooke, lib'l'ts proctors. Filed May 26, 1870.

200 Circuit Court of the United States for the southern dist. of New York, in the 2d circuit.

THE STEAMBOAT ST. JOHN, HER TACKLE, &C., The New Jersey Steamboat Company, cl'm'ts & appellants,
ag'st
ABRAHAM E. HASBROUCK, lib'l'nt & appellee.

To the Honorable the Supreme Court of the United States:

The petition and appeal of The New Jersey Steamboat Company, the above-named claimants and appellants, respectfully showeth: That on or about the 29th day of December, in the year one thousand eight hundred and sixty-four, the above-named libellant, Abraham E. Hasbrouck, filed his libel in the district court of the United States for the southern district of New York, against The steamboat St. John, her engine,
201 tackle, apparel, and furniture, and against all persons lawfully intervening for their own interest therein, in a cause civil and maritime of damage from collision, in which said libel it is in substance alleged, among other things, that on the 20th day of November, in the year 1864, the barge "Ulster County," owned by libellant, came into collision with the said steamboat "St. John," and that by such collision said barge and her cargo were injured to the damage of seven thousand seven hundred and five dollars, to the said libellant, and that said libellant in said libel prayed that the district court would pronounce for the damages aforesaid, and for costs; that the said steamboat "St. John" was attached upon process issued on said libel, and was discharged on the said The New Jersey Steamboat Company filing their claim
202 and entering into stipulation, and the said New Jersey Steamboat Company filed their claim and answer to said libel, and such proceedings were had in the said cause; that on the twenty-ninth day of June, 1868, a final decree was made and pronounced therein, wherein it was in substance adjudged that the libellant recover against the steamboat "St. John," her tackle, &c., the sum of eleven thousand nine hundred and two $\frac{38}{100}$ dollars with costs.

And that after such final decree your petitioner duly appealed therefrom to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said circuit court, and there tried anew, and such proceedings were had in the said circuit court; that afterwards, on the 14th day of May, 1870, the said circuit court made a final decree in the said cause, whereby
203 it was decreed that the said decree appealed from be affirmed, deducting therefrom the sum of five hundred dollars out of the item of $1,500 allowed for the demurrage of the barge, and that neither party recover costs of the appeal, &c., which said decree of the said circuit court is, as this appellant is advised, erroneous, and ought to be reversed.

Wherefore this appellant appeals from the whole of the said decree of said circuit court to the Supreme Court of the United States, and respect

America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Friday, the 11th day of February, in the year of our Lord one thousand eight hundred and seventy:

Present, the Honorable L. B. Woodruff, circuit judge.

ABRAHAM E. HASBROUCK
vs.
ST'BOAT ST. JOHN, &C.

This case being still on hearing,
Mr. Charles Donohue argues on the part of the libellant and appellee.
Cur. adv. vult.

195

196 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on the 14th day of May, in the year of our Lord one thousand eight hundred and seventy:

Present, the Honorable L. B. Woodruff, circuit judge.

ABRAHAM E. HASBROUCK, APPELLEE,
vs.
THE STEAMBOAT ST. JOHN, &C., APPELLANT.

This cause coming on to be heard on the appeal herein, after hearing Charles Jones, esq., for appellant, and Charles Donohue, esq., for appellee, it is ordered, adjudged, and decreed that the judgment appealed from herein be affirmed, deducting therefrom the sum of five hundred dollars out of the item of $1,500 allowed for the demurage or detention of the barge, and that neither party recover costs of this appeal.

L. B. WOODRUFF,
Circuit Judge.

197 (Endorsed:) U. S. circuit court, S. D. of N. Y. Ab'm. E. Has brouck, appellee, v. The steamboat "St. John," her tackle, &c. appellant. Decree. Filed May 14, 1870.

198 Circuit court of the United States for the southern district of New York.

ABRAHAM E. HASBROUCK, LIB'L'T & APPELLEE,
vs.
THE STEAMBOAT "ST. JOHN," HER TACKLE, &C.,
The New Jersey Steamboat Company, claimants & appellants.

The above-named claimants, The New Jersey Steam Navigation Company, hereby state to this honorable court that they appeal, and they hereby appeal, to the Supreme Court of the United States from the whole decree entered in the above-entitled cause, on the fourteenth day of May, 1870, with the clerk of this court; and the said appellant prays that the same may be sent to the Supreme Court of the United States.

CHARLES JONES,
Proctor for Claim't & Appellant.

N. Y., May 26, 1870.
To KENNETH G. WHITE, Esq., *Clerk.*

199 (Endorsed:) U. S. circuit court, south. dist. of New York. Abraham E. Hasbrouck, lib'l't & appellee, vs. The St'b't St. John, her tackle, &c., The New Jersey St'b't Company, cl'n'ts & app'l'ts. Notice of appeal. Charles Jones, proctor for cl'm'ts & app'l'nts. Due and timely service of a copy of within notice is hereby admitted. Dated May 26, 1870. Beebe, Donohue & Cooke, lib'l'ts proctors. Filed May 26, 1870.

200 Circuit Court of the United States for the southern dist. of New York, in the 2d circuit.

THE STEAMBOAT ST. JOHN, HER TACKLE, &C., The New Jersey Steamboat Company, cl'm'ts & appellants,
ag'st
ABRAHAM E. HASBROUCK, lib'l'nt & appellee.

To the Honorable the Supreme Court of the United States:

The petition and appeal of The New Jersey Steamboat Company, the above-named claimants and appellants, respectfully showeth: That on or about the 29th day of December, in the year one thousand eight hundred and sixty-four, the above-named libellant, Abraham E. Hasbrouck, filed his libel in the district court of the United States for the southern district of New York, against The steamboat St. John, her engine,
201 tackle, apparel, and furniture, and against all persons lawfully intervening for their own interest therein, in a cause civil and maritime of damage from collision, in which said libel it is in substance alleged, among other things, that on the 20th day of November, in the year 1864, the barge "Ulster County," owned by libellant, came into collision with the said steamboat "St. John," and that by such collision said barge and her cargo were injured to the damage of seven thousand seven hundred and five dollars, to the said libellant, and that said libellant in said libel prayed that the district court would pronounce for the damages aforesaid, and for costs; that the said steamboat "St. John" was attached upon process issued on said libel, and was discharged on the said The New Jersey Steamboat Company filing their claim
202 and entering into stipulation, and the said New Jersey Steamboat Company filed their claim and answer to said libel, and such proceedings were had in the said cause; that on the twenty-ninth day of June, 1868, a final decree was made and pronounced therein, wherein it was in substance adjudged that the libellant recover against the steamboat "St. John," her tackle, &c., the sum of eleven thousand nine hundred and two $\frac{38}{100}$ dollars with costs.

And that after such final decree your petitioner duly appealed therefrom to the circuit court of the United States for the southern district of New York, and the said cause was removed thereby into the said circuit court, and there tried anew, and such proceedings were had in the said circuit court; that afterwards, on the 14th day of May, 1870, the said circuit court made a final decree in the said cause, whereby
203 it was decreed that the said decree appealed from be affirmed, deducting therefrom the sum of five hundred dollars out of the item of $1,500 allowed for the demurrage of the barge, and that neither party recover costs of the appeal, &c., which said decree of the said circuit court is, as this appellant is advised, erroneous, and ought to be reversed.

Wherefore this appellant appeals from the whole of the said decree of said circuit court to the Supreme Court of the United States, and respect

fully prays that the said decree of the said circuit court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the
204 said cause anew, and that said decree of the said circuit court, and every part thereof, may be reversed, and a decree made dismissing said libel with costs or such other decree as to the said Supreme Court shall seem just.

And your petitioner will ever pray, &c.

Dated N. Y., May 26, 1870.

CHARLES JONES,
Proctor & Advocate for Appellants.

(Endorsed:) U. S. circuit court southern dist. of New York. The St'boat "St. John," her tackle, &c., The New Jersey Steam Navigation Company, claimants & appellants, vs. Abraham E. Hasbrouck, lib'l't & appellee. Petition and appeal. Charles Jones, p'r for cl'm'ts & app'l'ts.

I hereby admit due and personal service of the within petition and appeal on Abraham E. Hasbrouck, libellant & appellee.

Dated May 26, 1870.

BEBE, DEAN & DONOHUE.
BEBE, DONOHUE & COOK,
Lib'ts Proctors.

Filed May 26, 1870.

205

206 *Bond for costs.*

Circuit court of the United States of America for the southern district of New York, in the second circuit.

ABRAHAM E. HASBROUCK, LIBELLANT & APPELLEE,
vs.
THE STEAMBOAT ST. JOHN, HER ENGINE, tackle, &c., The New Jersey St'boat Co., cl'm'ts & appellants.

Know all men by these presents, that we, The New Jersey Steamboat Company, John Englis & Daniel Drew, are held and firmly bound unto the above-named libellants and appellee in the sum of thirty-five thousand dollars, to be paid to the said libellants & appellees, for the payment of which well and truly to be made we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents. Sealed with our seals, and dated the fourteenth day of June, in the year of our Lord one thousand eight hundred and seventy.

Whereas the above-named claimants & appellants have prosecuted an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York.

Now, therefore, the condition of this obligation is such, that if the above-named cl'm'ts & appellants shall prosecute their appeal to effect and answer all damages and costs, if they fail to make their said appeal

good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

N. JERSEY STEAMBOAT CO.,
By JOHN CHRISTIE. [L. S.]
JOHN ENGLIS. [L. S.]
D. DREW. [L. S.]

Sealed and delivered, and taken and acknowledged, this 14th day of June, 1870, before me, as to John Englis.

JOHNA. SHIELDS,
U. S. Com.

Sealed & delivered, & taken & acknowledged, this 15 day of June, 1870, before me, as to New Jersey Steamboat Company & Daniel Drew.

JOHNA. SHIELDS,
U. S. Commissioner.

207 UNITED STATES OF AMERICA,
Southern District of New York, ss:

John Englis, of Ravenswood, Queens County, being duly sworn, doth depose and say, that he is worth the sum of thirty-five thousand dollars over and above all his just debts and liabilities.

JOHN ENGLIS.

Sworn to this 14 day of June, A. D. 1870, before me.

JOHNA. SHIELDS,
U. S. Commissioner.

SOUTHERN DIST. OF NEW YORK, *ss:*

Daniel Drew, of No. 41 Union Place, N. Y. City, being duly sworn, deposes and says, that he is worth the sum of thirty-five thousand dollars over & above all his just debts & liabilities.

D. DREW.

Sworn to before me, this 15th day of June, 1870.

JOHNA. SHIELDS,
U. S. Commissioner.

(Indorsed:) We are satisfied with the amount & sufficiency of the bond.

BEEBE, DONOHUE & COOK.

Filed this 15 day of June, 1870.

I approve of the within bond as to its form & the sufficiency of the sureties. June 15, 1870.

SAM'L BLATCHFORD,
District Judge.

208 By the Honorable Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To Abraham E. Hasbrouck:

Whereas The New Jersey Steamboat Company, claimant of the steamboat "St. John," her tackle, &c., has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of you, the said Abraham E. Hasbrouck, libellant, against the said steamboat "St. John," her tackle, &c., stating

that said decree is erroneous, and praying that the same may be reversed and the cause heard anew:

And the said The New Jersey Steamboat Company having duly entered their said appeal to the Supreme Court of the United States,
209 and filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the second circuit, the 15th day of June, in the year of our Lord 1870, and of the independence of the United States the ninety-fifth.

SAM'L BLATCHFORD,
District Judge.

(Endorsed:) U. S. circuit court. The steamboat "St. John," her tackle,&c., The New Jersey Steamboat Co., cla'm'ts & app'l'ts, vs. Abraham E. Hasbrouck, lib'l't & appellee. Citation Charles Jones, proctor for app'l'ts.

We hereby admit due and personal service of the within cita-
210 tion on Abraham E. Hasbrouck, the libellant & appellee. Dated June 15, 1870. Beebe, Donohue & Cook, Pr. for lib'l't & appellee.

211 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 209, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of Abraham E. Hasbrouck against the st'boat St. John, her tackle, &c., as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York in the second circuit, this 22 day of October, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the ninety-fifth.

[SEAL.] KENNETH G. WHITE,
Clerk.

[5-cent revenue stamp canceled.]

(Indorsement on cover:) S. New York, C. C. U. S. No. 331. The steamboat "St. John," her engine, &c., The New Jersey Steamboat Company, claimants, vs. Abraham E. Hasbrouck, appellants. Fied 5th December, 1870.

At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the City Hall, in the City of New York, on Monday, the 29th day of June, in the year of our Lord one thousand eight hundred and sixty-eight.

Present—The Honorable SAMUEL BLATCHFORD, District Judge.

ABRAHAM E. HASBROUCK *vs.* The Steamboat "ST. JOHN," her engine, &c.	18–526.

This case having been heard on exceptions taken by the claimants to the Commissioner's Report on file, and said exceptions having been disallowed: now, on reading the report on file, of John A. Osborn, Esq., United States Commissioner, to whom the above matter was referred, by which there is reported due the libellant for damages, by collision, in pleadings set forth, damages and interest, the sum of eleven thousand nine hundred and two dollars and thirty-eight cents; on motion of

Proctor for the libellant,

It is ordered, that the report be in all things confirmed, and that the libellant recover in this action against the steamboat *St. John*, her engine, &c., the amount reported due, together with his cost to be taxed, and that said steamboat, &c., be condemned therefor.

And on like motion, it is further ordered that in pursuance of the Act of Congress, passed March 3d, 1847, a summary judgment be, and the same is hereby entered against the New Jersey Steamboat Company, the principal, and Daniel Drew and John Englis, the sureties, on their bonds given on the discharge of the property arrested, for the sum of fifteen thousand seven hundred and fifty dollars, the amount of their said bonds, executed on discharging the said steamboat from custody.

And on like motion, it is further ordered, that unless an appeal be taken to this decree within the time limited and prescribed by the rules of this Court, that the libellant have execution to enforce satisfaction of this decree.

SAMUEL BLATCHFORD.

BEEBE & DONOHUE,
Proctors for the Libellant.

August 14th, 1868.

The parties, by their proctors, appeared on the taxation of costs, and the costs were taxed for the sum of $637 $\frac{20}{100}$ on this day, upon which the decree was finally perfected, and thereupon notice of appeal and petition on appeal were given, filed, and served, as hereinafter set forth.

GEORGE F. BETTS,
Clerk.

(Endorsed)—Vol. 18, No. 526, United States District Court for the Southern District of New York, Abraham E. Hasbrouck *vs.* The steamboat *St. John*, her engines, &c. Beebe & Donohue, Proctors for Libellant. Final Decree, *in rem.*, on confirmation of Commissioner's report and summary judgment on bond, under Act of Congress, March 3d, 1847. Filed and entered the 29th day of June, 1868. Docketed Judgment, June 30th, 1868.

Donatus —
collucon decessit
below with Brown

Supreme Court

OF THE UNITED STATES.

THE STEAMBOAT "ST. JOHN," HER ENGINE, &c., THE NEW JERSEY STEAMBOAT COMPANY,

Claimants & Appellants,

vs.

ABRAHAM E. HASBROUCK,

Libellant & Appellee.

Brief and Points for Appellants.

CHARLES JONES,
Proctor & Advocate.

This was a libel filed by the owners of the barge "Ulster County," for a collision between the steamboat "St. John" and the barge, and the facts in general are as follows:

The steamboat "St. John," at about three o'clock in the morning of the 20th November, 1864, was on one of her regular voyages from Albany to New York on the Hudson River, the propeller "Pluto" having the libellant's barge (the "Ulster County") in tow lashed to

her port side, with another barge lashed to her starboard side, and and a canal boat in tow astern, was on her voyage up the river from New York to New Paltz, in Ulster County. The weather was light and clear, the moon being about "half size," the tide was about half flood, and there was very little wind.

When near Magazine Point, about one quarter of a mile above West Point, the pilot of the "St. John" saw the stern light of the "Pluto" across the land of West Point, and judged she was in the westwardly part of the river; "thought she was best to the west shore" (fol. 72). At Magazine Point the river in its downward course turns abruptly to the eastward, its course being about east by south, and at West Point it turns abruptly southward, its course being south south-west (fol. 73-4). In coming down the river the "St. John" and steamboats of her size go to the eastward before taking a course down the river opposite West Point in order to get a proper turn and to avoid collision with vessels along the western shore below that point (fol. 88, 95).

As soon as the "Pluto" and her tow were discovered the "St. John," being then at or near Magazine Point, concluded to go to the left or eastward of the propeller and her tow, and signaled that intention to the "Pluto" by blowing two whistles, at the same time slowing the "St John." Hearing no answer to this signal he soon after repeated it, and stopped his boat, and no response was heard to the second signal. The "St. John" was thereupon immediately backed, and she had sternway on at the time of the collision (fol. 72, 77, 97, 110, 111, 117, 125).

The wheel of the "St. John," when she made the turn at Magazine Point, was a starboard, and was kept so up to the time of the collision. She did not change her course to the westward (fol. 77, 103-4, 114, 117, 121).

The only signal from the "Pluto" heard by the pilot and wheelsmen in charge of the "St. John" was one whistle after the St. John had commenced backing, and when the boats were near together, the "Pluto" then heading to the eastward (fol. 75, 93, 110, 117); and it was then too late for the "St. John" to obey this signal by going to the right or westward of the "Pluto" and her tow, or to change her course (fol. 80, 99, 112).

The "Pluto," before and at the time of the collision, was in charge of a pilot, a deck hand, and an unlicensed engineer. The deck hand was at the wheel at the time the "St. John" gave her first signal (fol. 40), and the pilot of the "Pluto" says he answered it and starboarded his wheel, though it was not heard on the "St. John," and soon after slowed and stopped his boat (fol. 34, 42). "I should suppose the 'St. John' was, at the time of slowing and backing, within three lengths from us." The propeller was not backed at any time before the collision (fol. 42), though she could be backed (fol. 47). The pilot of the "Pluto" was the *only seaman on board of her examined as a witness* on the part of the libellant who saw the collision, and he places the fault of the "St. John" on the sole and distinct ground that she did not follow the course indicated by her signal, that she *sheered to the westward* (fol. 33, 34, 44).

PROCEEDINGS.

The owner of the barge "Ulster County" libelled the steamboat "St. John," the 29th December, 1864, for $7,705 damages for a collision (fol. 1). The owners bonded the steamboat by a bond in the penal sum of $15,500, wherein the claim of the libellants is stated to

be $7,705 (fol. 19), and a stipulation for $250 costs. The answer was filed September 9, 1865.

The cause was heard on the 16th and 17th January, 1868, and the District Court on the 7th March, 1868, made a decree for the libellant with a reference to a commission to ascertain the damages (fol. 131). The Commissioner reported against the "St. John" $11,755.83 damages, April 14, 1868 (fol. 170). The report was excepted to (fol. 173) and confirmed, and a final decree entered for that amount and $637.20 costs.

The claimants appealed to the Circuit Court, and the decree was affirmed May 14, 1870, from which an appeal was taken to this Court May 26, 1870 (fol. 200).

THE LIBEL.

The libel alleges that the "Pluto," having the libellant's barge and others in tow, was going up the river on the east side of the channel below West Point, "it being a light moonlight morning, the moon about half size, and the weather clear and pleasant" (fol. 3), and as she opened West Point the "St. John" was discovered coming down in the middle of the river abreast Magazine Point.

That the proper course of the "St. John" was to have continued her course and gone to the westward of the "Pluto," but she gave a signal by whistles indicating that she was going to the left or eastward; that this signal was immediately answered, and the wheel of the "Pluto" was starboarded (fol. 4).

That soon after, the pilot of the "Pluto," discovering that the "St. John" was steering to the westward, and

that a collision was imminent, rung to slow and stop the "Pluto," but the "St. John" struck the barge "Ulster County," and she afterwards sunk (fol. 4).

That the damages of the libellant, the items of which are specified, amounted in the whole to $7,705 and upwards (fol. 5, 6).

The negligence specifically charged against the "St. John" is that she attempted to go to the eastward of the propeller, when she should have gone to the westward; in giving a signal that she was going to the eastward and then keeping to the westward; in not slowing and stopping; and in not having a proper look out and the lights required by law (fol. 6).

THE ANSWER.

The answer puts in issue upon the statement of the libel and alleges that when about abreast Magazine Point, the "St. John" opened West Point, and then saw the "Pluto" and her tow coming up the river below West Point. (Fol. 23).

That the "St. John" was about in the centre of the river, her usual course in going down at that place, and seeing that the propeller was pretty well into the westward, she blew two whistles as a signal for the propeller to keep to the left, which was not answered. (Fol. 24)

That the "St. John" was then stopped, and the propeller not answering her signal, she was backed and continued backing up to the time of the collision and that at the time the "St. John" commenced backing the propeller was heading to the eastward,

and then gave a signal for the "St John" to go to the right, but that it was too late for her to go to the westward of the propeller. (Fol. 24).

That the propeller had not at the time of the collision a competent crew, nor a competent pilot, at the wheel at the time the "St. John" gave her signal—that she was out of the proper track of steamboats going up the river—that she neglected to answer or obey the signals of the "St. John," and did not stop or back when the danger of a collision became apparent.

The grounds upon which the "St. John" was condemned in the Courts below were that she had not a proper lookout, and that she attempted to pass to the eastward or on the starboard side of the propeller and her tow, instead of passing to the right.

The report of the case in the District Court is in 2. Benedict Dist. Ct. R. p. 192, and in the Circuit Court 7. Blatchford Cir. Ct. R. p. 220, to which reference is here made.

FIRST POINT.

The absence of a lookout stationed forward on the bow of the "St. John," had nothing to do with causing the collision, and a person placed there could not have discovered the "Pluto" sooner, or her position in the river, more accurately than the Pilot, and wheelsmen of the "St. John."

(1) There was no fog, mist or haze on the water. It was "a light moonlight morning—the moon about half size—and the weather clear and pleasant." (Libel (Fol. 3.)

"What sort of a morning was it?" "It was light."
Bulles (Fol. 54.)

"What kind of a morning was it after you got up? "It was light." "Easily see the two shores?" Yes, sir: perfectly plain." Van Wart, (Fol. 63.)

"What kind of a morning was it?" "Very fine morning indeed, and light." "Very light?" "A bright moonlight morning."
Craft, (Fol. 65.)

It is evident that there was nothing in the state of the weather to prevent the pilots and others in the wheel-house, from seeing the respective vessels and their position, as far at least as either could have been discovered by a lookout stationed forward on the bow.

(2) The question of *where* on the "St. John' was the proper place for a lookout, in view of the point at which the collision took plaee (it being near West Point), cannot be doubted. The highest place on either vessel was the best point for a lookout, when each was turning or about to turn West Point. The Pilots are always expecting to meet vessels in that vicinity, and are vigilantly on the watch to discover and avoid them. (Fol. 95.)

In the present case it is proved that the stern light of the "Pluto" was seen over the land of West Point, by the pilot and wheelsmen of the "St. John," before she and her tow came in sight; (Fol. 73): the wheelhouse being 24 to 28 feet above the main deck (Fol. 94), enabled them to see the "Pluto" before any one below on the deck forward could have discovered her.

The vessels were seen each by the other as soon

as they respectively opened West Point, and their hulls were before that hidden by the high land between them.

The rule therefore, charging a steamboat to be in fault in cases of collision, for not having a lookout stationed forward as laid down in "*St. John vs. Paine*, 10 Howard 557, and repeated in numerous decisions of this Court since, does not apply to the "St, John" in the present case. The facts bring this case within the rule laid down in

The *Farragut* 10 Wallace, 334.
The *Fannie* 11 Id. 238.

SECOND POINT.

The "Pluto" had no lookout stationed forward, immediately before and at the time of the collision. The deck hand, who was called the lookout, was at the wheel. (Fol. 41.)

The statement of the pilot of the "Pluto" that the mate of the "Ulster County" was on the lookout is unfounded. (Fol. 42). He was not on board of, and had nothing to do with the propellor—he made no communications or signals to the pilot—he does not pretend to have acted as a lookout—his only duties were to stow, load and unload the barge. (Fol. 56)

The pilot of the "Pluto" cannot be regarded as a lookout within the rule. He according to his own statement, (Fol. 32) was walking around the vessel, went to her stern, examined the engine, and went forward, expecting to meet the "St. John."

See *The Hypodam* 6 Wallace, 216.

In respect to a lookout then, both vessels were equally culpable, and are chargeable with the consequences, resulting from their mutual fault or negligence, (if there was any) in that regard.

THIRD POINT.

The libellant failed to prove the material allegations of his libel.

1. The "St. John" did not change her course or sheer to the westward after passing Magazine Point, and after she had, by signal, given notice to the "Pluto" that she would go to the left or eastward of her.

The principal witness produced by the libellant, and examined on this point, was the pilot of the "Pluto," and this is his story.

"Q. Did the 'St. John' follow the signal that she "gave and starboard her helm? A. I think she "did. Q. The 'St. John'? A. Yes, sir. Q. "How long did she continue on that course after "she gave the signal? A. After she gave the "signal following on in the same course. Q. Did "she, after she gave her signal, starboard her "helm? A. No, sir; I don't think she did. Q. "The course she was on at the time she gave the "signal, how would that carry her? A. That "would have carried her clear of us; to the east-"ward of us. Q. She didn't starboard after her "signal, did she? What sheer did she make after "she whistled? A. After she whistled, her course "was to the westward, I think, that would be port-

"ing her wheel. Q. Did she starboard at all after "that signal? A. I don't think she did, sir. Q. "But her course before that signal would have "carried her to the eastward of you? A. It would, "sir. Q. At the time you first saw the 'St. John,' "how were you as to your position in the river; "nearer to which shore? A. To the eastward; "we were to the eastward of the centre of the "river. Q. You were nearer to the east than the "west? A. Yes, sir. Q. How was that as to the "time she whistled; were you nearer the east or "west shore? A. I was to the eastward; we "were to the eastward of the centre of the river. "Q. What sheer, if any, as far as you saw, did the "'St. John' make before she blew her whistle; "which way was it, towards the east or towards "the west? A. I think it was to the westward." (Trumper, fol. 33, 34.)

The same witness (fol. 33) says that when he answered the signal of the "St. John," he hove the wheel of the "Pluto" hard astarboard.

The gravamen, then, of the charge against the "St. John" is, that she did not keep her course; that if she had kept it, or had starboarded her helm, she would have gone to the eastward, but that, after the signal was given and answered, she ported her wheel and sheered to the westward, and this was the cause of the collision.

(*a*) This theory of the cause of the collision is sustained by a single witness only, who was on board the "Pluto," and he contradicts himself. He at first (fol. 33), in answer to questions put by libellant's counsel, says distinctly twice that the "St. John" followed her signal and starboarded her helm, but afterwards swears that she ported

her wheel and sheered to the westward. The only other witness on this point is Buller, the mate of the barge (fol. 53, 54, 57-8).

(*b*) This theory is inconsistent with the allegation in the libel, and the evidence in respect to the course of the "St. John," and the point in the river (in reference to the shores) where the collision took place.

The libel alleges (fol. 3) that as the propeller opened West Point, the "St. John" was discovered about abreast Magazine Point coming down about in the *middle* of the river, the usual and proper place, &c.

We (the "Pluto") were to the eastward of the centre of the river. Trumper, fol. 34.

We were to the eastward of the centre of the channel, three-quarters of the channel from the west shore. Brett, fol. 49.

I should judge we were in the middle of the river, or two-thirds of the way across from the westward. Bullers, fol 54, &c.

I should judge, by all appearances, that we were about in the middle, or a little to the eastward of the middle, of the river when we struck. Craft, fol. 66.

I should judge we were in the middle of the river, or nearer, if anything, to the eastward.

Van Wart, fol. 62.

At the time of the collision I should think we were about in the middle of the river.

Lake, fol. 78.

I should think we were just about in the middle of the river. Bulson, fol. 99.

It was somewhere in the middle of the river. Patterson, fol. 111.

It was pretty near the centre of the river, I should think. Bonner, fol. 117.

Of course, the collision having occurred at this point, and the "St. John" coming down, as the libellant charges, in the middle of the river, she could not have sheered or changed her course to the westward. And this especially, if it be true, as the libellant's witnesses swear, that the "Pluto" had starboarded her wheel at the time they speak of (fol. 33, 53-4).

(*c*) The libellant's witnesses swear that the "St. John" struck the larboard side of the "Ulster County" a few feet from her stem, she being then lashed to the larboard side of the "Pluto." This would have been impossible if the "St. John" had been sheering to the westward. On that course she would have struck on the starboard side, or would not have collided with the tow if the "Pluto" had changed her course to the westward as is claimed by the libellant.

(*d*) The pilot and three wheelsmen of the "St. John" swear positively that her wheel had been starboarded at about the time she passed Magazine Point (this action being necessary to enable her to turn that point), and was not ported up to the time of the collision.

I didn't change my course at all only to go to the east; I had made up my mind to go to the

east, and I continued on; I didn't change my course at all. * * * I hove the wheel to starboard to go to the eastward of him, and made up my mind to go to the eastward of him when I first saw him. Lake, fol. 77.

Came around Magazine Point with a hard a starboard wheel; didn't alter our wheel up to the collision. Bulson, fol. 104.

Put our wheel hard astarboard: did not make any change before the collision. Patterson, fol. 114, 115.

Came around Magazine Point on a hard astarboard helm, and didn't change it up to the collision. Bonner, fol. 123.

These witnesses all testify to what they did at the wheel, and in that respect they cannot be mistaken. And it is well settled that the positive testimony of witnesses, as to their own acts, is to be credited, though they may be mistaken as to their belief and opinion in other matters.

The Neptune Olcott R., 483.
(See pp. 494, 495.)

It is submitted that the charge that the "St. John" changed her course and sheered to the westward, is not only not supported by the evidence, but is clearly disproved.

2. No evidence was offered by the libellant that the "St. John" could, or ought to, have gone to the right or westward of the "Pluto" and her tow.

"Q. The course she (the "St. John") was on at

"the time she gave the signal, how would that "carry her? A. That would have carried her "clear of us, to the eastward of us."

Trumper, fol. 33.

"Q. If the "St. John" had kept her course to "the eastward, or had she obeyed her signal, would "there have been any collision? A. No, sir. Q. "If she had done either, there would have been "no collision? A. No, sir; I don't think there "would.

Bulles, fol. 59.

3. The only remaining charge of negligence made by the libellant against the "St. John," in respect to which evidence was given, is that she did not stop and back. It is clearly proved that she did by those who rang the bells and by the engineer, who obeyed them, and that at the time of the collision she had actually stern way on.

I think our steamboat had stern way on; I know she lost control of her rudder; the way her wheels flew around I thought she had stern way; we had been backing long enough to have stern way on.

Lake, fol. 77.

Also testimony of Bulson, fol. 97. Patterson, 110. Bonner, 117. Wright, the Engineer, 125.

FOURTH POINT.

The "Pluto" was not at the time of the collision properly manned and navigated.

1. At the time of the signal from the "St. John" a deck hand was at the wheel of the "Pluto," and even he was not called or examined as a witness. The pilot had left the wheel, was walking around the deck of the vessel, and was not in a position at the time the signal was given by the "St. John" to answer them promptly; and up to that time, and until he went into the wheel-house, there is nothing to show the course or direction of the "Pluto," or what was done on board of her (fols. 32, 40).

Although two signals were given by the "St. John," the pilot of the "Pluto," on his own testimony, answered *only one*, which must have been the second signal, and in this he was culpably negligent. If the first signal had been promptly answered and obeyed by the "Pluto," the collision might have been avoided.

The captain and engineer of the "Pluto" were both asleep (fols. 61, 48), and a man calling himself an engineer, but who was not licensed (fol. 48), was in charge of the engine. And thus, while coming to and when about to turn West Point, where collisions were liable to occur, the wheel of the "Pluto" was in charge of a deck hand, and her engine, of an unlicensed engineer, and with no one on the look out who could see vessels, except those approaching in a direct line (fol. 39).

2. On the libellants own showing the "Pluto" was not slowed or stopped until the vessels were near each other. "The 'St. John' was in the

neighborhood of three lengths from us." (Fols. 34, 35.)

The "Pluto" was not backed, nor was any order given or attempt made to back her up to the time of the collision (fol. 42).

The only excuse given for not backing is, that she could not be easily backed; but this is not a good excuse (1). She could have been backed, as is shown by the libellants' testimony, and it was her duty to have taken that action (fol. 47, 48), and (2). In navigating the river, the "St. John" had a right to assume that the "Pluto" was able to manage her tow and by backing, and otherwise to take all the usual and proper means to avoid a collision. In either view of the case, the "Pluto" is chargeable with negligence.

FIFTH POINT.

The "St. John" was properly and skilfully navigated, and her officers and crew followed in all respects the usual and prescribed route of navigation on the Hudson river.

1. The "St. John" was well manned, having in charge of her wheel an experienced, licensed pilot and three experienced wheelmen, and also a licensed engineer in charge of her engine (fols. 70, 71, 96, 109, 116, 124).

2. The "St John," when about abreast Magazine Point, discovering the "Pluto" below, and in such a position in the river, she being "best to

the west shore" (fol. 72), that it would be proper for her to go to the eastward, slowed and blew two whistles as a signal that each should keep to the left. This signal was not answered. Thereupon, the "St. John" was stopped and gave a second signal to the same effect, which was not answered, or if answered, was not heard. Hearing no answer the "St. John" was backed, and at about the time or soon after she commenced backing a signal, and the only one which was heard from the "Pluto" was one whistle, which was a signal for the "St. John" to go to the right, but as she was then backing, it was too late for her to obey this signal.

This is the substance of the testimony of the pilot and three wheelsmen in charge of the wheel of the "St. John."

Lake, pilot, fol. 72, 75.
Bulson, wheelsman, fol. 97, 98.
Patterson, „ „ 109, 110.
Bonner „ „ 117.

That these signals were given does not admit of doubt. The fact is sworn to positively by four witnesses who were at the wheel of the "St. John" and knew what was done, and they are not in this contradicted by any of the witnesses.

There is some conflict of evidence as to whether the "Pluto" answered the signal of the "St. John" by blowing two whistles. No such answer was heard by the pilot and wheelsmen of the "St. John" and the only signal from the "Pluto" which was heard by them was one whistle, and this just before the collision.

That the first signal of the "St. John" was not answered at all, and that the second was not ans-

wered promptly, is apparent from the fact that the pilot of the "Pluto" does not pretend to have made more than one answer, and that he was not in the wheel house at the time the signal which he did answer was given by the "St. John."

3. The pilot of the "St. John" in deciding not to pass to the right but to the left of the "Pluto" and giving the signal to that effect acted properly and in conformity with the rules of navigation prescribed in such a case and then in force

(*a.*) It was unsafe for him with a steamboat of the size of the "St. John" to attempt to pass West Point near the west shore. It was her usual course to take a wide sweep and to go down in middle of the river or nearer to the east shore, in order to get a proper turn and not collide with vessels below the Point (fols. 88, 95). And this must have been well known to the pilot of the "Pluto" who says he had for some time been a boatman and pilot on this river.

(b.) By the concurrent testimony of the witnesses the vessels were not meeting "head and head." (1.) The pilot of the "St. John" says he thought the "Pluto" was the "best to the west shore" (fol. 72). And the wheelsmen think she was not far from the middle of the river (97) (2). The pilot of the "Pluto" also says that the course the "St. John" was on when she gave the signal would have carried her *clear of the "Pluto"—eastward* of her (fol. 33). To the same effect is the evidence of Buller (fol. 53), who says if the "St. John" had kept the course she was on after she blew her whistles she would have gone to the *eastward* of the "*Pluto.*"

(c.) The pilot of the "Pluto" did not dissent from the "decision" made by the pilot of the "St. John," but on his own testimony accepted it as correct by his answering signal and by starboarding his wheel. This estops the libellant now from asserting that the pilot of the "St. John" decided incorrectly, or mistook the position and course of the "Pluto." If there was a mistake it was a mutual mistake, and the loss should fall on both vessels.

(d.) The signal given by the "St. John" was followed by her. Her wheel was hove astarboard and kept so up to the time of the collision.

See testimony of Lake, Bulson, Patterson and Bonner, hereinbefore cited and referred to.

It is submitted therefore that the rule laid down by the Circuit Court, that the "St. John" took the risk of the attempt to pass to the left and that the hazard of the consequences of giving the signal rested on her, is incorrect.

The "St. John" as strictly followed the rule of navigation in what she did, as she would by passing to the right if she had met the "Pluto" "head and head." Any other doctrine would render null the rules of navigation which have been adopted.

(4.) The collision occurred in about the middle of the river and nearly opposite West Point (fols. 99, 105, 117, 78). The wheel of the "St. John" was astarboard and kept so from Magazine Point up to the time of the collision. The barge "Ulster County" lashed to the larboard side of the "Pluto," was struck on her

larboard bow. This shows that she could not have obeyed the signal and starboarded her wheel, but if she changed her wheel at all it must have been ported. This is consistent with the one whistle which the pilot and wheelsmen of the "St. John" heard from the "Pluto" before the collision.

SIXTH POINT.

Whatever may have been the signals given by either vessel and whatever may have been the point of the collision it is clearly proved that the "St. John" had been slowed, stopped and backed before the collision and had actually sternway on at that time. This is positively sworn to by five witnesses, namely: the pilot, three wheelsmen and engineer of the "St. John." It is as fully proved that the "Pluto" was not backed even when the danger of a collision became apparent, but kept on her course, and that she had an incompetent crew, and that her pilot was not attending to his duties for a considerable time before the collision.

SEVENTH POINT.

The decree of the Court below as to the amount of damages is erroneous.

1. The amount of the recovery should have been limited to the sum claimed in the libel. The bond was given under the act of Congress approved March 3, 1847. Although the *penalty* of the bond

is in double the amount claimed by the libellant, it was actually given—and the surities must have so understood it—to secure the ultimate payment of the sum specified in the libel and no more.

The Court had no power without notice to the sureties. and without their consent to increase their liability beyond the amount of the claim made, when they executed the bond.

It is submitted that the order of the District Court, amending the libel was improperly granted. (Fol. 182.) It was made after interlocutory decree, and after the report of the Commissioner. (Fol. 170) The seventh exception of the claimants, (Fol. 176) should have been allowed.

2. The first exception of the claimants to the report of the Commissioner, of the sum of $1200, for permanent loss of value, or deterioration of the "Ulster County" was well taken and should have been allowed. (Fols. 169, 173.)

(1.) The "Ulster County" was repaired as to her hull &c. by a ship-carpenter, selected and employed by the libellant, and she was undergoing repairs for a period of three months. (Fol. 133.)

(2). The barge was thoroughly repaired. There was nothing so far as the hull of the vessel was concerned left undone which was deemed necessary by the ship carpenter or libellant.

"Q. What injury was done to the vessel that "you did not repair? A. There was joiner "work to be done, and stanchions to be put in. "Q. What was there for a shipbuilder to do

"that you did not do when she left your hands?
"A. There were a few stanchions we did not
"put in."

Fox, fol. 136.

(This work was completed by Morrow (fol. 137,) afterwards.

"I made the 'Ulster County' tight; put as
"good timber in her as she had before."

Fox, fol. 137.

"The 'Ulster County' was thoroughly re-
"paired, made tight and staunch."

Hasbrouck, libellant, fol. 141.

"How much was she worth after expending
"the $7,000? A. She was worth no more than
"before the collision" (fol. 143).

(3.) The opinions of the witnesses as to the supposed deterioration of the barge were not based upon any facts from which the commissioner or the Court could determine the amount.

Morrow places it in part upon injury to the reputation of the vessel, and partly because it is not possible to remedy all the injuries (fol. 138).

Fox speaks of no injuries which could not be repaired (fol. 134).

The damages for such an injury are wholly speculative, and there is no limit to the amoun

which witnesses might give as a mere matter of opinion or conjecture.

The Isaac Newton, 4 Blatchford Cir. Ct. R. 21.
Sawyer *v.* Oakman, 7 Id. 290 (p. 306-7).

EIGHTH POINT.

We ask that the libel be dismissed; if not that the recovery be limited to the amount claimed in the libel, and that the damages be apportioned; if not that the item of $1,200 for permanent injury, &c., be disallowed, and the libellant's costs in the District Court be limited to $250, the amount of the stipulation for costs.

CHARLES JONES,
Counsel for Claimants.

Supreme Court, U. S.

ABRAHAM E. HASBROUCK,
Libellant and Appellee,

ads.

The Steamboat "ST. JOHN,"
Appellant.

Brief and Points for Appellee.

This action is prosecuted by the owners of the barge "Ulster County," for injuries that took place by a collision between the barge and the "St. John," the barge of the libellant at the time being in tow of the steamer "Pluto."

The libel claims, page 1, fol. 3, Art. 3, that the barge was lashed on the port side of the "Pluto," that the night was clear moonlight, tide half flood, the tow being along the east side of the channel, going with tide about four miles an hour. * * * That the "St. John's" proper course would be to the west, * * * Instead of doing so, she blew two whistles to go to the east of the "Pluto." * * * That the propeller answered. * * * That the "St. John" was discovered heading to westward, that the propeller stopped and collision occurred. The barge claims as bailee. (Art. 4. fol. .) The causes of negligence alleged for the collision by the barge are (fol. 6, p. 283): 1. That the "St. John" did not go the westward as she should. 2. In giving a signal that she was going to

the east, and then going to the west; in not slowing and backing in time; in not keeping a look-out.

The answer of the "St. John" does not allege or charge any fault on the barge "Ulster County," but she seeks to charge the "Ulster County" with the fault of the "Pluto."

The answer (p. 9, fol. 23–4,) states that the "St. John" was going down the middle of the river * * * saw the propeller pretty well to the West; that the "St. John" signalled the propeller to keep to the West; the propeller did not, but headed to the East; that the propeller blew two whistles to the "St. John" to go to the right; that the collision was caused (4 Art., p. 9,) by the propeller being out of her place, by having an improper crew, and in not answering or obeying the signals of the "St. John."

The evidence on the merits, stripped of all surplusage, shows that the propeller was to the East of the river when the "St. John" whistled, and did answer her whistle properly, and that although the propeller did starboard, the collision occurred in the middle of the river and not to the West of it.

McGregor Tremper, pilot of the "Pluto," (page 12, fol. 34,) the propeller to the East of the centre of river shows the speed of the propeller (fol. 31); left New-York at six o'clock; had only got to West Point after one o'clock (fol. 31); saw the engine working slow; were going four to five miles an hour (fol. 32, p. 12); answered the "St. John's" two whistles (fol. 34); the "St. John" sheered to the West; saw a collision unavoidable; stopped; if the "St. John" had continued to sheer to East would not hit (page 13, fol. 36); the "St. John" cut into barge eight to ten feet; propeller (page 14, fol. 37,) 100 feet long. Again at fol. 43, p. 17, shows a change to the West.

James Fowler, for the libellant, (fol. 46, p. 18,) going four miles an hour close shut off (fol. 47); got the order to stop, and stopped before collision about a minute.

Sidney Brett (fol. 49, p. 19,) propeller to the East of river at collision (page 20); went into barge eight feet and parted all the barge's hawsers (p. 51).

Harvey Bulls, fol. 52–3, on the forward deck of the barge, saw the "St. John" coming; page 22, fol. 53, tug answered her; sheered to west after "St. John" blew two whistles; she could have gone to east of the "Pluto," 54; the "St. John" sheered to west, 54; collision parted all the lines the propeller had out, page 33, fol. 55; propeller just going, fol. 57; "Pluto" answered and shaped her course across, 57–58; the "St. John" changed her course after the "Pluto," she would have gone clear but for that to the east; plenty of room for the "St. John" to go to west of propeller; before she whistled, the "St. John" had two thirds of the river to the west; answer of the "Pluto" not over two or three seconds promptly, 58–9; If the "St. John" had obeyed her signal there would have been no collision.

Stephen Van Wart, 61, collision knocked the barge clear from steamboat, and the "St. John" followed her, p. 26; ran barge down, 62; had to back down to barge; "St. John" went 300 feet before she brought up, 62; collision in middle of river, a little to east, if anything.

Philip R. Craft, fol. 66, p. 28, at collision a little to east of middle of river.

The "St. John" called her first pilot, Hubert Lake, and we submit that his evidence, though hard to draw out, shows he made a mistake as to the position of the "Pluto," and that he had at the time of the collision got from within 200 to 300 feet of the East shore to middle of river.

Fol. 66, he says they were a little to East of middle at collision; fol. 72, thought she, the "Pluto," most to West shore; said I guess we will go to eastward of that fellow; had got to West Point when he gave the two last signals, fol. 75; fol. 77, this witness swears distinctly that he never changed except to starboard; I made my mind up to go to

East, and did not change, this is simply impossible; at 78 he again says, collision in middle of river; 79, did not feel collision, barge did not leave propeller's side; fol. 85, he ¼ mile above the point and propellor ⅛ mile below, when he first saw her; now after swearing positively that he did not port, at fol. 87 he swears he did see his whole statement at this fol. , the propeller had not got to the point, see fol. 88, and see if he does not, although unwillingly, admit that he was mistaken as to his judgment as to the position of the propeller; fol. 89, nothing at Magazine Point to prevent keeping to the West, at fol. 93 the only change after signal was to head to West.

Bulson (99), could not say whether the propellor going at all; collision in middle of river about opposite West Point at the time in the act of turning the point; (101) had not swung to westward, and yet he immediately seems to infer he did (102) at Magazine Point, only 200 feet from east shore; (103) hove the wheel hard aport, halfway between Magazine Point and West Point Then he says he did not alter; the story not only contradicts itself, but is impossible, see (103–4) collision below West Point.

James Patterson: (111) collision in middle of river; (112) could do nothing after the two whistles, so close together; (113) at Magazine Point half way from east shore; (114) no change after hard astarboard; (115) collision the nearest we got to New-York.

Joseph Bonner: collision in middle of the river, (fol. 117 –123), kept the helm astarboard from going around Magazine Point until collision—a simple impossibility.

Joel Wright, then engineer, shows best the distance be tween the different bells; (127) order to stop, 15 seconds after slow, then 7 seconds, then 5 to back.

This statement of the evidence would seem to fix these facts beyond dispute, that one boat from 6 o'clock to collision had made about one-third of the distance to Albany,

the "St. John" had made two-thirds from 8 o'clock, at the outside 6 hours; the "St. John" had made about 110 miles at a speed, without deducting for her slow speed at starting, 17 miles an hour. That when she whistled she was to the east shore, within 200 feet of it; that we at that time were on the east shore, going, at the outside, 4 miles an hour, and that the pilot in charge of the "St. John" made a mistake as to our position in the river, and that after being 200 feet from the east bank, the "St. John" got into collision with us about the middle of the river.

FIRST.—It is clear that the "Pluto" did no act that caused the "St. John" to take the course she did in attempting to go to the east of her. The maratime rule is, that the vessels meeting and passing each other should go to the right—that is, their own right. It is the rule of the road and the rule of the sea. (See , and Rules of Act of 1864.)

It is clear that the "St. John," without reference to our wishes or desires, selected her course, and persevered in it, if you believe her witnesses.

SECOND.—The collision arose from the combination of these faults on the "St. John." The want of a lookout on the "St. John," who could have told we were on the east shore and not close to West Point. The mistake of the pilot of the "St John" on the point and the speed of the "St. John."

1. It is clear that the "St. John" had no lookout, and that no one attempted to direct or suggest anything to Lake, who was the pilot in charge.
2. It is clear Lake was mistaken in his opinion of where the "Pluto" was when he whistled.
3. The speed the "St. John" was going at, about 17 miles an hour, in a channel only twice her length,

did not give her either her time after she whistled, and found her mistake to overcome it.

There can be no doubt about the fault on the "St. John;" it is hard to get Lake to admit what he does.

THIRD—There is no fault on the "Pluto;" it is clear that she was going up on the East side of the channel, and that as soon as she was ordered by the "St. John" to do it by the two whistles, she did haul to the West. The captain of the "Pluto," her pilot, and others all testify to this, and the evidence of those on board and who saw it done, is worth any number of the opinions of those who were not well situated to observe.

FOURTH.—There was no time for the "Pluto" to have got out of the way of the "St. John," after the "St. John" attempted her false movement. Take the statement of 112–113 fol. he says no time after the two whistles to prevent collision. But the most important witness is the "St. John's" engineer. He says it took less than thirty seconds up to collision, from slowing. Now, as the "St. John" was going 17, and the propeller 4, this would be a mile in less than three minutes, or one-sixth of a mile in half a minute.

FIFTH.—The "Ulster County" is not liable for the fault of the "Pluto." Had she been partly in fault, one of two wrongdoers cannot say to the man he has injured, "I only injured you half." He cannot put the injured man to the expense and risk of joining parties other than those he can show a clear case against. It would be the height of injustice to a man on whom an injury has been inflicted, to make him, at his peril, join all that might be wrongdoers.

SIXTH.—The statement that the "St. John" starboarded at Magazine Point, and kept that starboard, is the sheerest piece of falsehood that can be attempted.

1. She was, when she starboarded at Magazine Point, 200 to 300 feet from east shore; at collision, about middle of the river.
2. It is an impossibility for a vessel to hard-a-starboard at Magazine Point and not run ashore on the east side before she gets to West Point.
3. The pilot states after he got to West Point he ported, or at least ported to come around it, and one of his men first said the same and then changes.

On the merits there never was a clearer case made out of fault on the "St. John's" part solely.

On the question of damages:

First.—The Court had a perfect right to allow an amendment as to the amount. The libel was filed before all the repairs had been made, and before all the damages had been ascertained. The amendment was a simple act of justice. Benedict ad 1483 1358.

Second.—The exception first to the damages is not sustained. As a matter of law permanent injury is recoverable. As well might the point be made in the case of a horse and wagon or a house, what you can't repair you must pay for. Fox 134, p. 59, as matter of fact, shows the injury reported; Morrow, p. 60, fol. 138, same; Hasbrouck same, at p. 62. If the claimant doubted the facts sworn to, why did he not examine and prove the contrary? When the question, as here, is one of fact, the Court will not disturb it.

Second.—The second exception is too general; there is proof that the item was incurred, see Potomac, 2 Bl 581 1 Wal 43 Comr in Chief

case in chief last of folio 140, proves the amount and it is not disproved.

Third.—The same objection is true to the fourth exception. It is certainly too general; fol. 142 proves the items are not contradicted.

Fourth.—The fifth exception is rather general, but the proof makes out the case, and sustains the report, see 141.

Fifth.—Interest at seven per cent. would be a proper allowance; there is no different interest in that from contract.

Sixth.—The eighth exception is certainly too general, and comes too late; see case cited in second point.

The question of damages on the facts has been tried by the Commissioner, Judge Blatchford, in the Circuit, and it is rather late to ask a reversal of it.

On the question of merits in the cause, it is a simple question of fact and should not be disturbed.

We respectfully submit the judgment should be affirmed, with costs and damages.

C. DONOHUE, *Advocate.*

2 Brightly
7 Blatchford 229
Decree as appended
9 Wall 146